90-1340

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

SUPREME COURT CASE NO.

ELEANOR S. SIMPSON,
Petitioner

v.

DONALD M. SIMPSON; TERRY C. YOUNG,
GILES, HEDRICK & ROBINSON, P.A.;
TANYA PLAUT; LAWSON LAMAR, SHERIFF
OF ORANGE COUNTY, FLORIDA; AND MINNIE BRIDGES;
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT COURT OF APPEAL

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QUESTIONS PRESENTED FOR REVIEW

1. WHETHER THE PETITIONER WAS DENIED THE EQUAL PROTECTION OF THE LAW BY NOT BEING ALLOWED TO CLAIM A HOMESTEAD EXEMPTION ON HER PROPERTY INTEREST IN THE FORMER MARITAL RESIDENCE OF THE PARTIES.

2. WHETHER THE PETITIONER WAS DENIED SUBSTANTIVE AND PROCEDURAL DUE PROCESS OF LAW WHEN SHE WAS NOT ALLOWED TO MAKE A BID ON HER HOMESTEAD PROPERTY AND WAS NOT ALLOWED AN OPPORTUNITY TO REDEEM PRIOR TO FINAL DEPRIVATION OF HER PROPERTY.

3. WHETHER THE PETITIONER WAS DENIED HER RIGHTS TO SUBSTANTIVE DUE PROCESS WHEN EXCESSIVE FORCE WAS USED AGAINST HER IN THE EXECUTION OF A STATE ENFORCEABLE WRITS ORDER

4. WHETHER THE RESPONDENTS WERE ACTING UNDER COLOR OF STATE LAW IN DEPRIVING THE PETITIONER, ELEANOR S. SIMPSON, OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS AND TO THE EQUAL PROTECTION OF THE LAW WHEN THE SHERIFF OF ORANGE COUNTY FLORIDA SOLD THE PETITIONER'S INTEREST IN HER MARITAL RESIDENCE TO HER FORMER HUSBAND, HAVING A VALUE IN EXCESS OF $100,000 FOR THE SUM OF $8,400.00 UNDER AN UNCONSTITIONALLY INFIRMED NOTICE OF SALE

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LIST OF INTERESTED PARTIES

The undersigned, as the attorney for the Petitioner, ELEANOR S. SIMPSON, pursuant to United States Supreme Court Rule 14.1(b), supplies herewith, the following certificate of interested persons, showing unto the court as follows:

1. The district judges in the U.S. Middle District, Orlando District were Patricia Fawsett and Wendall Sharp. The judges on the Eleventh Circuit Court of Appeal were C. Clyde Atkins, Elizabeth Kravitch and R. Lanier Anderson.

2. The parties having a direct interest in the outcome of this appeal are as follows:

ELEANOR S. SIMPSON
DONALD M. SIMPSON
TERRY C. YOUNG
GILES, HEDRICK & ROBINSON, P.A.
TANYA PLAUT
MINNIE BRIDGES
LAWSON LAMAR, Sheriff of Orange County, Florida

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3. The names of all attorneys having a direct interest in the outcome of this appeal are as follows:

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CONCISE STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

This is a Petition for Writ of Certiorari from the Eleventh Circuit Court of Appeal.

The date of the entry of the judgment of the Eleventh Circuit Court of Appeal is November 15, 1990, a per curiam offirmance order of the trial court's summary final judgments.

This court has jurisdiction under Title 28, United States Code Section 1254(1).

The Petitioner, ELEANOR S. SIMPSON, has ninety (90) days from the judgment of the Eleventh Circuit Court of Appeal dated November 15, 1990 in which to file a Petition for Writ of Certiorari with this court. That deadline date is February 13, 1991.

CONSTITUTIONAL PROVISIONS, TREATISES, STATUTES, ORDINANCES AND REGULATIONS WHICH THE CASE INVOLVES

This case involves the following constitutional provisions, treatises, statutes, ordinances and regulations, to-wit:

1. U.S. Constitution, 14th Amendment, Section One which provides:

"All persons born or naturalized in the United States, and subject to the jurisdictions thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the priviledges or immunities or citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its

jurisdiction the equal protection of the laws."

2. U.S. Constitution, 5th Amendment which provides in pertinent part that:

"No person shall be deprived of life, liberty, or property, without due process of law"...

3. Title 28, United States Code, Section 1983 which provides:

"Every person who under color of any statute, ordinance, regulation, custom, or usage of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof, to the deprivation of any rights, priviledges, or immunities, secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

4. Title 42, United States Code, Section 1985(3), which provides:

"If two or more persons in any State or Territory conspire... for the purpose of depriving either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the law; or for the purpose of preventing or

hindering the constituted authorities of any state or territory from giving or securing to all persons within such state or territory the equal protection of the law;...in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of citizens of the United States, the party so injured or deprived may have an action for the recovery of or deprived may have an action for the recovery of damages occasioned by such injury or deprivation against any one or more of the conspirators."

4. Florida Constitution, Article X, Section 4A in effect on April 30, 1984 which provided:

"There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvements, or repair thereof, or obligations contracted for house, field or other labor forms under realty, by the following property owned by the <u>head of a family</u>, or:

> 1. A homestead...if located within municipality to the extent of 1/2 acre of contiguous land, upon which the exemption shall be limited to the

residence of the owner or his family...(emphasis added)

5. Florida Constitution, Article X, 4a Amendment approved November 1984 that the homestead exemption from forced sales shall apply to:.

"the following property owned by a natural person:(1) a homestead.... (emphasis added)

6. Florida Statute 56.22 Execution sales; time, date, and place of sale" which statute provides:

"All sales of property under legal process shall take place at the time, date, and place advertised in the notice of sheriff's sale on any day of the week except Saturday and Sunday and shall continue from day to day until such property is disposed of. Property not effectively disposed of at the initial sheriff's of sale may be readvertised, as provided in s. 56.21, upon receipt of an additional deposit to cover costs connection of the maintenance of the property under legal process. In the event no additional deposit received by the sheriff, the property may be returned to the Respondent; if the Respondent refuses to accept such property, the property may be returned to a third party, such as a lien holder, upon presentation of proper court order

directing such return. If none of the above can be accomplished, such property shall be disposed of as unclaimed or abandoned.

7. Florida Statute, Section 45.031 "Judicial Sales Procedure", which provides:

"In any sale of real or personal property under an order of judgment, the following procedure may be followed as an alternative to any other sale procedure if so ordered by the court:

(1) SALE BY CLERK-In the order or final judgment, the court shall direct the clerk to sell the property at public sale on a specified day that shall be not less than 20 days after the date thereof, on terms and conditions specified in the order or judgment. In cases when a person has an equity of redemption, the court shall not specify a time for the redemption, but the person may redeem the property at any time before the sale. Notice of sale shall be published once a week for 2 consecutive weeks in a newspaper of general circultation, as defined in chapter 50, published in the county where the sale is to be held. The second publication shall be at least 5 days before the sale. The notice shall contain:

a. A description of the property to be sold.

b. The time and place of sale.

c. A statement that the sale will be made pursuant to the order or final judgment.

d. The caption of the action.

e. The name of the clerk making the sale. The clerk shall receive a service charge of $40 for his services in making, recording, and certifying the sale and title that shall be assessed as costs. The court may enlarge the time of the sale. Notice of the changed time of sale shall be published as provided herein.

STATEMENT OF THE CASE

This Petition for Writ of Certiorari in this court is from an order of the Eleventh Circuit Court of Appeal dated November 15, 1990 affirming partial final summary judgment of the United States middle district court entered on July 10, 1989, dismissing with prejudice the Petitioner's civil rights suit against the Respondents, upon motion by the Respondents for summary judgment and a supplemental final summary judgment dated August 4, 1989 and filed August 7, 1989.

The Petitioner had originally filed suit in the U.S. Middle District, Orlando Division, against the named Respondents for violation of her civil rights under Title 42, U.S.C. Section 1983 and under Title 42, U.S.C. Section 1985(3), as well as for other pendant claims.

The federal district court order dated July 10, 1989 dismissed the Third Amended Complaint with prejudice as to all counts and all parties, except the allegations concerning the deputy's use of excessive force during Petitioner's arrest on counts IV and V and the allegations as to Respondent Simpson in count IX. A subsequent judgment of dismissal of Petitioner's counts IV and V with prejudice, was dated August 4 and filed August 7, 1989. After non-jury trial, the trial court denied Petitioner's relief in count IX pursuant

to an order dated August 24, 1989. This order is not on appeal.

On April 16, 1985, the Petitioner filed a multi-count complaint against DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., TANYA PLAUT, and LAWSON LAMAR, as Sheriff of Orange County, Florida, et. al. for alleged violation of her civil rights under Title 42, U.S.C., Section 1983 and Title 42 U.S.C., Section 1985(3), including various counts for pendant jurisdiction. Petitioner, after various motions to dismiss and orders thereon filed a first, second, and third amended complaint.

Various of the Respondents' Motion to Dismiss Petitioner's second amended complaint were granted on September 26, 1986. This order was without prejudice. Petitioner thereafter filed a Motion for Leave to File a Third Amended Complaint

R4 100, which was granted by the District Court on October 22, 1986. The Respondent, MINNIE BRIDGES, d/b/a MINNIE BRIDGES Realty, was added in the Third Amended Complaint.

Thereafter, each of the Respondents filed various Motions to Dismiss Petitioner's third amended complaint. The Motion to dismiss of the Respondent, TANYA PLAUT, was granted on December 2, 1986. Petitioner then filed a Motion for Reconsideration or in the alternative a Motion for Entry of Judgment as to this Respondent.

During the months of March, April, May and June, 1989, each of the Respondents filed various Motions for Summary Judgment, to which the parties filed various memoranda of law.

Petitioner represented herself in proper person when she filed various

notices and amended notices of appeal from the federal district court's summary judgment.

The essential facts of this case show that on April 30, 1984, the Sheriff of Orange County, Florida, LAWSON LAMAR, sold Petitioner's one half interest in her marital residence, awarded to her in her dissolution proceeding to her former husband, DONALD M. SIMPSON at 11:00 a.m. for $8,400, the amount of a judgment held against Petitioner by Petitioner's former attorney, TANYA PLAUT. The sale was conducted as a sheriff's execution sale under Florida Statute 56.22, rather than as a clerk's sale under Florida Statute 45.031. The Notice of Sale prepared by the Sheriff stated that Petitioner's interest in her homestead marital residence of over 23 years would be sold to the highest bidder over a three hour

period, i.e. between 11:00 a.m. and 2:0
p.m. When Petitioner showed up by 12:3
p.m. to make the highest bid so as to pa
off the Judgment, the deputy sherif
refused to allow her to bid, telling
Petitioner he had already sold
Petitioner's interest to her ex-husband,
DONALD M. SIMPSON at 11:00 a.m.

Petitioner immediately protested and
filed a motion to set aside the sale
which was denied after opposition by
DONALD M. SIMPSON, LAWSON LAMAR, TANYA
PLAUT, TERRY C. YOUNG, and GILES, HEDRICK
& ROBINSON, P.A. DONALD M. SIMPSON, TERRY
C. YOUNG and GILES, HEDRICK & ROBINSON,
P.A. had Petitioner evicted through a
Writ of Possession. The house was
quickly listed and sold at TERRY YOUNG'S
recommendation by MINNIE BRIDGES, a
sister of a sitting circuit court judge
over Petitioner's strong objections while

her dissolution was still on appeal.

The final judgment of dissolution of marriage awarded the parties an equal interest in the marital home, and further provided that the house was to be partitioned through a public sale in the event the parties had not sold the house within six (6) months from the date of the entry of the final judgment. The final judgment further provided that all net proceeds from the sale were to be equally distributed between the parties. A subsequent order allowed Petitioner to stay in the home until all appeals were exhausted, which was not done. The final judgment also awarded ELEANOR S. SIMPSON, the sum of Twenty Thousand ($20,000.00) Dollars, as restitution and reimbursement of one-half of the marital assets which were misspent by DONALD M. SIMPSON on a known prostitute and drug addict.

Both husband and wife appealed to th state appellate court. DONALD M. SIMPSO was required to post a supersedeas bon and agreed to file with the Circuit Cour of Orange County, a certificate o deposit with Coral Gables Federal in th amount of $22,655.00 which he cashed i violation of the trial court's orde because the Clerk failed to keep th original certificate of deposit.

During the pendency of the initia dissolution proceedings, the Petitioner' attorney, TANYA PLAUT, withdrew fro representing ELEANOR S. SIMPSON and file a separate lawsuit against ELEANOR S. SIMPSON for attorney's fees which she ha previously disclaimed in 1982.

While ELEANOR S. SIMPSON'S appeal o her dissolution proceeding was pending i the state appellate court, th Respondent, TANYA PLAUT, procured a fina

judgment against ELEANOR S. SIMPSON for $8,100.00.

The Respondent, TANYA PLAUT, then caused the Sheriff, LAWSON LAMAR, to issue a Notice of Sheriff's Levy dated March 24, 1984, levying upon the property interest of ELEANOR S. SIMPSON, to her marital and homestead residence.

LAWSON LAMAR, as Sheriff of Orange County, Florida, through Sgt. Stuart Trainum, then caused to be published in the local newspaper, a Notice of Sheriff's Sale, which provided:

"That on the 30th day of April, 1984, between the legal hours of 11:00 o'clock in the fore noon and 2:00 o'clock in the afternoon on said date, at the East door of the Courthouse in Orlando, Orange County, Florida, I will offer for sale and sell to the highest bidder for cash on demand, the above described property as the property of said Respondent, to satisfy said Judgment and Writ of Execution."

ELEANOR S. SIMPSON read the Notice of Sheriff's Sale and understood it to mean

that she could show up between the hour
of 11:00 o'clock and 2:00 p.m. and mak
the highest bid on the Judgment hel
against her by TANYA PLAUT so as to pa
if off.

ELEANOR S. SIMPSON showed up at th
Sheriff's office at approximately 12:3
p.m. on April 30, 1984, to make th
highest bid on the sale, so as to pay of
the judgment and redeem her homestea
property. Deputy Trainum advised tha
she could not bid on the property sinc
he had already sold the property t
DONALD M. SIMPSON, at 11:00 a.m. in th
presence of TANYA PLAUT, TERRY YOUNG an
DONALD M. SIMPSON for the mere sum o
$8,400.00. The Sheriff's Notice of Sal
for execution now provides that sale
shall commence at 11:00 a.m. - a
substantial difference and admission b
the Sheriff that the prior notice wa

unconstitutionally vague. The value of ELEANOR S. SIMPSON'S one half interest was at least $75,000 - $100,000, or more. The Petitioner objected and stated she had until 2:00 p.m. to make the highest bid, but the Sheriff's deputy refused to allow her to bid at all and refused to allow the Petitioner to pay off the judgment or to otherwise redeem here interest in the property by paying off the judgment prior to the 2:00 p.m. deadline.

The Respondent, DONALD M. SIMPSON, was given additional time to secure the funds to pay on his bid. In fact, the Petitioner saw DONALD M. SIMPSON in the Sheriff's office as she was going in to out bid DONALD M. SIMPSON.

Petitioner filed a motion to vacate the sheriff's sale which was denied by

the Orange county circuit court on Jun 13, 1984.

Before the sale, ELEANOR S. SIMPSON had attempted to prevent the sale by claiming the property as her homestead. While representing herself, ELEANOR S. SIMPSON filed an emergency motion to stop the sale which was denied by the Orange county circuit court.

The Respondent, LAWSON L. LAMAR, issued his sheriff's deed on May 1, 1984, to the Respondent, DONALD M. SIMPSON, in care of the Respondent, TERRY C. YOUNG at GILES, HEDRICK & ROBINSON, P.A.

Petitioner had requested from the Respondent TANYA PLAUT and the Respondents, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A. and DONALD M. SIMPSON, the right to pay off the judgment held by PLAUT. All of these Respondents refused to allow the

Petitioner to pay off the judgment before or after final deprivation of her property interests. PLAUT refused to withdraw the sale. Immediately thereafter, DONALD M. SIMPSON, through his attorney, TERRY C. YOUNG, and GILES, HEDRICK & ROBINSON, P.A. filed various motions for writ of possession against the Petitioner, and had the Petitioner forcibly removed from the home that she had lived in for twenty-two (22) years, while the dissolution was still on appeal.

DONALD M. SIMPSON, immediately following the Sheriff's sale, sold the residence through realtor Respondent, MINNIE BRIDGES, the sister of Cecil H. Brown, an Orange county circuit court Judge, one day after its listing and over $60,000.00 below its market value. MINNIE BRIDGES was referred to DONALD M. SIMPSON by TERRY YOUNG.

Petitioner's used Petitioner's monie to buy her interest in her house by usir monies from a certificate of deposi pledged to the Clerk of Orange County a a supersedeas bond. In fact, under th dissolution judgment, DONALD M. SIMPSO owed ELEANOR S. SIMPSON $20,000.00 fo restitution at the time he bough Petitioner's interest in her home!

In October, 1983, the Petitioner' ex-husband, DONALD M. SIMPSON and hi attorneys, TERRY C. YOUNG and GILES HEDRICK & ROBINSON, P.A. obtained a order from the Orange county circui court granting permission for th Sheriff's forcible entry of th Petitioner's home for the removal o various items of personal property.

When ELEANOR S. SIMPSON objected t the deputy sheriff removing one of he prized Hummel possessions, she wa

subjected to excessive force and abuse by the deputy sheriff, and was immediately placed under arrest. All of the criminal charges of resisting arrest without violence and assault and battery were dismissed. The order granting the permission for the Sheriff's forcible entry during the recovery of personal and marital property made no provision for the resolution of any dispute that could arise between the parties as to whether the ex-husband was taking any of the personal property of the ex-wife. Also, the order was done while the dissolution was on appeal. The wife was arrested and incarcerated without any hearing as to her claims that her ex-husband was taking her personal property! The order was prepared by the ex-husband's attorney with the substantive approval of LAWSON LAMAR'S attorney.

ELEANOR S. SIMPSON had previousl complained vociferously in the Orang county state court proceedings about th conduct, police brutality and actions o the Respondents, and in fact, filed document with the Orange County Circui Court on June 9, 1983, entitle "Facts-Showing the Abuse of Justice an the Sham of This Trial." (see copy i Appendix) Additionally, ELEANOR S SIMPSON had made complaints about th judges' handling of her case, both on th local level as shown by the record an with the Florida Judicial Qualification Commission in Tallahassee.

After the Petitioner made numerou complaints to the local judges an judiciary, she claims that th Respondents then acted together or i concert or collaborated together as par of their retaliatory conduct to depriv

her of her civil rights to due process and equal protection of the law. At no time after her complaints about the local judiciary did any of the Circuit Judges protect ELEANOR S. SIMPSON'S one-half interest in the marital home awarded to her.

The Petitioner, ELEANOR S. SIMPSON, filed suit in the U.S. Middle District, Orlando Division, against the Respondents for damages for the violation of her civil rights under Title 42, U.S.C. Section 1983 and Section 1985(3), as well as various other pendant counts for constructive trust and false arrest.

ISSUE ONE

WHETHER THE PETITIONER WAS DENIED SUBSTANTIVE AND PROCEDURAL DUE PROCESS OF LAW WHEN SHE WAS NOT ALLOWED TO MAKE A BID ON HER HOMESTEAD PROPERTY AND WAS NOT ALLOWED AN OPPORTUNITY TO REDEEM PRIOR TO FINAL DEPRIVATION OF HER PROPERTY

In particular, the Petitioner has complained that notwithstanding her numerous efforts to redeem or pay the final judgment held by TANYA PLAUT on the date of the sale, she was refused this by all of the Respondents named in this count. The Petitioner was never given an opportunity to redeem her interest in her homestead where she had lived for twenty-two (22) years, prior to final deprivation of the same. Petitioner believes that this is an unconstitutional denial of her rights to due process in the ownership of her property.

In Luger v. Edmonson Oil Company, Inc., 457 U.S. 922, 73 L.Ed.2d. 482, 102 S.Ct. 2744 (1982), this Court held that joint action with state officials to accomplish the deprivation of constitutionally protected property interests will support a claim against

private parties under the civil rights statute. The procedural scheme created by the statute is a product of state action and is thus, subject to constitutional restrains and may be addressed in a civil rights action, if the second element of the state action requirement is met as well. In Luger, this court held that the debtor who was subjected to a pre-judgment attachment procedure under the state law was deprived of his property through state action.

In the instant action, the Petitioner has challenged the constitutionality of the statutory procedures set forth in Florida Statute 56.22, which is the statutory procedure utilized by these Respondents to deprive the Petitioner of her property without allowing her an

opportunity to redeem before fina
deprivation.

Beginning with Sniadach v. Famil
Finance Corp., 395 U.S. 337, 89 S.Ct
1820, 23 L.Ed.2d. 349 (1969), this cour
has consistently held that constitutiona
requirements of due process apply t
various garnishment and attachmen
procedures, whenever the officers of th
state act jointly with a creditor i
securing the property in dispute. I
North Georgia Finishing, Inc. v. Di
Chem, Inc., 419 U.S. 601, 95 S.Ct. 719
42 L.Ed.2d. 751 (1975), this court rule
the garnishment procedure statut
unconstitutional. In Mitchell v. W.T
Grant Company, 416 U.S. 600, 94 S.Ct
1895, 40 L.Ed.2d. 406 (1974), this cour
held the state statutory procedure to b
an unconstitutional denial of due proces
and also stated that the private use o

the challenged state procedures with the help of state officials constituted state action for the purposes of the Fourteenth Amendment.

In Lugar, this court noted that if a debtor in the state court debt collection proceedings can successfully challenge on federal due process grounds, the creditor's resort to the procedures authorized by state statute, it is difficult to understand why that same behavior by the state court Petitioner should not provide a cause of action under Section 1983. If the creditor violates the debtor's due process rights by seizing his property in accordance with statutory procedures, there is little or no reason to deny to the latter, a cause of action under the Federal Statute, Section 1983, designed to provide judicial redress for such constitutional violations.

In fact, in Fuentes v. Shevin, 40
U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d. 55
(1972), where debtor brought a 198
action against a private creditor and th
Florida Attorney General, this court hel
the Florida pre-judgment replevin statut
unconstitutional.

This court had consistently held tha
a private party's joint participatio
with state officials in the seizure o
disputed property is sufficient t
characterize that party as a state acto
for purposes of the Fourteenth Amendment
The rule in these cases is the same a
that articulated in Adicks v. S.H. Kres
& Company, 398 U.S. 144, 150, 90 S.Ct
1598, 1604, 26 L.2d.2d. 142 (1970)
wherein this court noted:

"Private persons, jointly engaged wit
state officials in the prohibited action
are acting "under color" of law, fo
purposes of the statute. To act "unde
color" of law does not require that th
accused be an officer of the state. I
is enough that he is a willfu

participant in joint activity with the state of its agents."

Quoting U.S. v. Price, 383 U.S. at 794, 86 S.Ct. at 1157

The Petitioner in this action was procedurally denied due process since she did show up under the notice to bid on her house between the hours of 11:00 a.m. and 2:00 p.m. The plain language of the notice of Sheriff's Sale leads any reasonable person to conclude that the highest bidder between the hours of 11:00 and 2:00 would obtain the property. The Sheriff refused to allow ELEANOR S. SIMPSON to bid in this three (3) hour period. None of the Respondents in this count allowed the Petitioner to bid after the ex-husband had bid at 11:00 a.m. The Sheriff refused to allow the Petitioner to redeem her property. These Respondents refused to allow the Petitioner to pay off the judgment debt

prior to final deprivation of her homestead interest of over twenty-two (22) years.

In the instant action, the Petitioner was given no post-deprivation remedy to satisfy the due process rule that she not be deprived of her property without due process of law. In the instant case, the Petitioner claims a constitutional right to have been given an opportunity to redeem her interest in the subject property or to at least been able to bid on the property between the hours of 11:00 a.m. and 2:00 p.m. as she was notified to do, and for which she was refused.

In fact, as Petitioner claimed in Count III of her third amended complaint, had the sale been conducted under Chapter 45,031, "Judicial Sales Procedures," of the Florida Statutes, which allows the

Clerk of the court rather than the Sheriff to conduct the sale, she would have had ten (10) days from the date of the sale in which to redeem her equity in the property. See Walters v. Galman, 286 So.2d 275 (Fla. 4th DCA 1973), Matter of Sarasota Land Company, 36 BR 536 (1983); Allstate Mortgage Corp. of Florida v. Strasser, 286 So.2d 201 (Fla.3d DCA 1973). Instead, Respondents used Florida Statute 56.22 "Execution, Sales; Time, Date, and Place of Sale," to deny Petitioner any right to redeem subsequent to sale or during the sale period. The above cited Florida cases and federal bankruptcy cases have ruled that under Chapter 45, redemption may be granted subsequent to the date of sale up until the issuance of the certificate of title ten (10) days later. Florida statute 56.22, denies equal protection of the law

and denies due process by not giving the judgment debtor any post deprivation right of redemption for Sheriff's execution sales as is allowed for Clerk's sales under Florida Statute 45.031. There is no rational reason for this different treatment.

Additionally, the Respondents and in particular the sheriff's failure to allow the Petitioner the opportunity to pay off the judgment or to redeem her interest in the property, at least until the 2:00 deadline, was a denial of her rights to due process because of the vagueness of the Notice of Sale which prejudiced Petitioner by not telling her the property could be sold at exactly 11:00 a.m. without futher bidding after that time.

The statutory procedure involved in Florida Statute 56.22, denies the

Petitioner procedural and substantive due process prior to final loss of her property, in violation of the Fourteenth Amendment, since it fails to contain any adequate post-deprivation remedy, as is provided to Respondents under Florida Statute Chapter 45.

The Petitioner does not believe it is asking too much that she be allowed the same right to bid on her property in the time frame given to her or to otherwise pay off the judgment or redeem her interest in the property on the same day of the sale or at least within the ten (10) day period as is granted to other judgment debtors under Chapter 45, before she loses forever, all of her right, title and interest to her former marital residence which she lived in for a period of over twenty-two (22) years and on which she was paying all mortgage

payments, taxes and insurance, maintenance and upkeep under the orders of the trial dissolution judge.

Even under the Magna Carta, neither the King nor his Baliff could seize any land or rent for any debt so long as the chattels of the debtor were sufficient to repay the debt, a right which was denied to the Petitioner in this action. Florida Statute Section 2.01 provides that the common law of England in effect as of July 4, 1976, is also the law of Florida, hence making the rights preserved in the Magna Carta applicable in Florida.

The Petitioner tried everything she could to effectuate a post-deprivation remedy. She filed a motion to set aside the sheriff's sale, which was denied. The statute provided her with no remedy or relief. These Respondents in

combination with the local judiciary refused to allow her any post deprivation relief.

The trial court's summary judgment in favor of these Respondents cannot be supported either by the facts or by the law, and should therefore be reversed, with directions to allow this to proceed to trial by jury.

The U.S. middle district court's judgment against the Petioner's claims of denial of equal protection of the laws and the Eleventh Circuit's per curiam affirmance conflict with this court's prior rulings and are a departure from constitutional law so as to support the issuance of a Writ of Certiorari from this court.

ISSUE TWO

WHETHER THE PETITIONER WAS DENIED THE EQUAL PROTECTION OF THE LAW BY NOT BEING ALLOWED TO CLAIM A HOMESTEAD EXEMPTION ON HER PROPERTY INTEREST IN THE FORMER MARITAL RESIDENCE OF THE PARTIES.

The Florida Constitution, Article X, provides for an exemption from forced execution sales for homestead property. It states: "There shall be exempt from forced sale under process of any court, the following property owned by the head of a family,:

1A. Homestead...if located within a municipality to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or his family..." (Emphasis added)

In November, 1984, Article X of the Florida Constitution was amended by referendum to provide that the homestead exemption would apply to any natural person. See Wescott v. Wescott, 487 So.2d 1099 (Fla. 5th DCA 1987). An exemption for homestead property under the laws of Florida should be construed

liberally for the benefit of the one claiming the exemption. See Edward Leasing Corp. v. Uhlig, 652 F.Supp. 1409 (S.D. Fla. 1987); More v. Rote, 552 So.2d 1150 (Fla.3d DCA 1989).

Even the Florida supreme court has ruled that under the former constitution, it is possible for an owner to be a homesteader without having persons financially dependent upon him. See Public Health & Trust v. Lopez, 531 So.2d 946. 850 at note 5 (Fla. 1988).

The Petitioner was unconstitutionally denied her rights to equal protection of the laws since she was not allowed to perfect her claim to homestead exemption from forced execution sales of her home that she had lived in for a period of twenty-two (22) years and where she had conducted her real estate business and "farm area" in real estate business for

over 22 years.

This provision of the homestead exemption clause of the Florida Constitution, Article X, as applied by the Orange county circuit court and as applied by the United States middle district court unconstitutionally deprived the Petitioner of her equal rights to own homestead property since it unreasonably and unfairly discriminated against women. This is a class based and invidiously discriminatory against women See Life Ins. Co. of N.A. v. Reichart, 591 F.2d. 499 (9th Cir. 1979).

The only constitutionally permissible construction of the former Florida Constitution Article X, is to allow homestead exemption also to single or divorced women and widows without dependents who are heads of their own households, since to do otherwise allows

for invidious discrimination against single women who own their homes. In fact, in Cain v. Cain, 549 So.2d 1161 (Fla. 4th DCA 1989), the Florida appellate court refused to allow the ex-wife's attorney to levy against the ex-husband's one-half interest in the former marital residence to satisfy an award of attorneys fees and costs, holding that the ex-husband retained his homestead interest in the former marital residence notwithstanding the dissolution judgment awarding possession to the ex-wife where the ex-husband's children resided there, he still received some mail there and there was no evidence of either alienation of his interest or intent on his part to establish homestead elsewhere.

Under In Re: Estate of Melisi, 440 So.2d 584 (Fla.4th DCA 1983), DONALD M.

SIMPSON'S one-half interest could not be subject to forced sale because he could claim homestead, while the interest of ELEANOR S. SIMPSON could be sold. This is an invidious discrimination against women which should not be allowed. The Petitioner's claims of denial of equal protection of the law by unequal application of Article X, Section 4 of the Florida Constitution, states a claim for relief under Title 42, U.S.C. Section 1985(3). In fact, the Florida Supreme Court's own Commission On Gender Bias concluded, in its report of 1990:

1. "The Commission found during its two years of hearings and study that gender bias-discrimination based solely on one's sex--is a reality for far too many people involved in the legal system. And invariably, those who regard gender bias as an illusion have never suffered its effects. Indeed, the over-whelming weight of evidence and research gathered by the Commission supports only one possible conclusion: Although some may ignore its existence, gender bias permeates Florida's legal system today. Certainly the Commission is aware that the practice of law often only reflects

our society's larger culture. Gender bias surely did not originate with lawyers alone. Nevertheless, gender bias is practiced to a disturbing degree by members of this state's legal profession, often in forms that have become highly institutionalized. The refusal of some lawyers to acknowledge this fact is one of the primary mechanisms by which gender bias is perpetuated.

From its inception, the Commission's charge was to document the true scope of this problem and propose solutions. We were not asked simply to determine if gender bias exists in Florida, because this question already had been resolved by a detailed monograph published by Charlene Carres and the Florida State University Policy Studies Clinic. After reveiwing this monograph, the Chief Justice of Florida and his colleagues on the Florida Supreme Court concluded that gender bias does in fact exist in the state's legal system. The Court then created the Commission and ordered to "determine in what areas of our legal society bias based on gender exists, and recommend measures to correct, or at least minimize the effect of, any such bias." See copy of appendix filed with this Writ of Certiorari including portions of the report of the Florida Supreme Court Gender Bias Study Commission 1990". See also Article in Florida Bar Journel, "The Pressing Need to Eliminate Gender Bias in Florida's Justice System," by Justice Gerald Kogan, May, 1990, P.9, included in Petitioner's Appendix to this petition.

In fact, the Commission in its analysis of Florida's No Fault Divorce Legislation found that judicial decisions based upon what appears to be gender neutral language were gender-discriminatory in application. See Report P.45, See Appendix Re: Empirical Examination of Gender Bias in Florida Dissolutions of Marriages, etc. Appendix to Writ of Certiorary. Moreover, the Commission's survey also stated that Florida courts favored the husband in the division of marital property. The Commission's review of written appellate decisions published in the first half of 1989 tended to confirm these observations.

The evidence before the federal district court was replete with complaints from ELEANOR SIMPSON about her unfair and unequal treatment by the male judiciary in Orange County, Florida.

Even the Florida Supreme Court Commission on Gender Bias made a recommendation that the Florida Bar should amend the Code of Judicial Conduct and the Rules regulating the Florida Bar to prohibit inappropriate unprofessional behavior toward female litigants, witnesses and attorneys. The evidence before the federal judge in the instant action clearly showed that ELEANOR S. SIMPSON attempted to make a complaint to the chief judge of the circuit but was rebuffed in all of her efforts with the chief judge saying he had no authority or jurisdiction to do anything about her complaints. This is in contradiction to the recommendation of the Florida Supreme Court Gender Bias Commission to requre chief judges in each circuit to develop complaint procedures. See Report, P. 237, Recommendation N.10.

The Respondents did operate together to defeat and deprive the Petitioner of her homestead and did operate together and did object to her having an opportunity to redeem her interest in the property prior to final deprivation. None of the circuit judges did anything to enforce the final judgment of dissolution awarding ELEANOR S. SIMPSON one-half of the marital home even though a number of Florida cases supported the theory that all that DONALD M. SIMPSON obtained when he paid off the judgment to TANYA PLAUT was a lien for what he was due. See Andrews v. Andrews, 155 Sla. 654, 21 So.2d 205 (1945); Kronberg v. Krupa, 118 So.2d 7901 Fla. 3d DCA (1960); See Generally, 12 Fla. Jur. 2d Cotenancy & Partition, Section 16, "Unities of estate' requisites as to fair dealing". DONALD M. SIMPSON in fact owed ELEANOR S.

SIMPSON $20,000.00 when he bid on her property interest.

There is no question but that there is more than an operative set of facts from which a jury could reasonably infer that the judges were, in fact, biased against ELEANOR S. SIMPSON because of her sex and because of her vociforous complaints about her treatment as an ex-military spouse.

The Petitioner has shown sufficient facts to show the motivation from which a jury could reasonably infer the existence of a conspiracy, in violation of Title 42, U.S.C. Section 1985(3).

In Adicks v. S.H. Kress & Company, 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d. 142 (1969), this court reversed a summary judgment entered by a district court with respect to the Petitioner's conspiracy count. In Adicks, this court noted that

in granting the motion for summary judgment, the district court simply stated that there was "No evidence in the complaint nor in the affidavits or other papers from which a "reasonably minded" person might draw an inference of conspiracy." This noted in Adicks that its own scrutiny of the factual allegations of the Petitioner's complaint as well as the material found in the affidavits and depositions presented, convinced the Supreme Court that summary judgment was improper, since the Respondents failed to carry its burden of showing the absence of any genuine issue of fact.

The rulings of the federal trial court and the Eleventh Circuit are in violation of this court's holdings in Adicks.

As noted by the concurring opinion of Justice Black, the existence or non-existance of a conspiracy is essentially a factual issue that the jury, not the trial judge should decide. The right to confront, cross-examine and impeach adverse witnesses is one of the most fundamental rights sought to be preserved by the Seventh Amendment provision for jury trials in civil cases. The advantages of trial before a live jury with live witnesses and all the possibilities of considering the human factors, should not be eliminated by substituting trial by affidavit in the sterile bareness of summary judgment. It is only when the witnesses are present and subject to cross examination that their credibility and the weight to be given to their testimony can be appraised. Trial by affidavit is not

substitute for trial by jury which has so long been a hallmark of even handed justice. See Pauler v. Columbia Broadcasting System, Inc., 368 U.S. 464, 473, 82 S.Ct. 486, 491 7 L.Ed.2d. 458 (1962).

Again, there is sufficient factual basis before the trial court to show that ELEANOR S. SIMPSON was a victim of discrimination on account of her sex. In particular, even the Florida Supreme Court Committee on Gender Bias Study found that even thought there is neutral language in the Florida "No Fault" divorce law, the law has been described as discriminatory against women. See Appendix M. This is what happen ed to ELEANOR S. SIMPSON. She was discriminated against on the basis of her sex and not allowed to make a claim for a

homestead exemption as is allowed to others in similar situations. This is a denial of ELEANOR S. SIMPSON'S right to equal protection based solely on her sex.

The District Court's granting of summary judgment under Petitioner's claims for Title 42, U.S.C. Section 1985(3) relief should be reversed with instructions to have this remanded to trial by jury See, e.g., Dennis v. Sparks, 449 U.S. 24, 449, 66 L.Ed.2d. 185, 101 S.Ct. 183 (1980) (wherein this Court held that an action under Title 42, U.S.C. Section 1983 against private parties who allegedly conspire with the state judge may be maintainable despite the state judge's immunity.

ISSUE THREE

WHETHER THE PETITIONER WAS DENIED HER RIGHTS TO SUBSTANTIVE DUE PROCESS WHEN EXCESSIVE FORCE WAS USED AGAINST HER IN THE EXECUTION OF A STATE ENFORCEABLE WRITS ORDER

Under Count I, the Petitioner, ELEANOR S. SIMPSON, sued her ex-husband, DONALD M. SIMPSON, as well as his attorney, TERRY C. YOUNG and GILES, HEDRICK & ROBINSON, P.A. for violation of her civil rights under Title 28, U.S.C. Section 1983.

In particular, the Petitioner alleged that on October 6, 1983, while the dissolution was on appeal to the Fifth District Court of Appeal of Florida, these Respondents did cause a deputy sheriff from the Orange county sheriffs department to go into the Petitioner's former marital residence with the ex-husband, DONALD M. SIMPSON, to seize and take numerous items belonging to the Petitioner and not belonging to DONALD M. SIMPSON. This is in violation of the Department's policy of providing two(2)

deputies for domestic disputes. When ELEANOR S. SIMPSON objected to the method and manner of taking of her items of personal property, the deputy sheriff did, without probable cause and without a warrant, assault and physically injure the Petitioner by using clearly excessive force, and did directly cause the Petitioner to suffer a fainting spell and did physically cause the Petitioner to suffer other injuries including lung surgery due to tuberculosis breakdown aggravated by the arrest and various nervous breakdowns. The Petitioner was caused to be placed under hospital care by Dr. Daniel Goldwyn, her psychiatrist.

The Petitioner was handcuffed by the deputy sheriff and taken to the Orange county jail where she was held for several hours until she could secure her release.

While 42 U.S.C. Section 1983 is a federal remedy which protects only federal constitutional rights and while state tort claims do not necessrily constitute Section 1983 claims, various federal court decisions have recognized that the facts underlying state tort claims for false arrest, abuse of process and malicious prosecution may also provide the basis for a Section 1983 claim. See, e.g., Tucker v. Duncan, 499 F.2d. 963 (4th Cir. 1974); Nesmith v. Alford, 318 F. 2d. 110 (5th Cir. 1963), cert. denied 375 U.S. 975, 84 S. Ct. 489, 11 L.Ed.2d 420 (1964); Shaw v. Garrison, 328 F.Supp. 390 (E.D. La. 1971), aff'd 467 F.2d. 113 (5th Cir.), cert. denied 409 U.S. 1024, 93 S.Ct. 467, 34 L.Ed. 2d 317 (1972); Sexton v. Gibbs, 327 F.Supp. 134 (N.D. Tex. 1970), aff'd 446 F.2d 904 (5th Cir. 1971), cert. denied 404 U.S.

1062, 92 S.Ct. 733, 30 L.Ed.2d 751 (1972).

The Respondents, DONALD M. SIMPSON, TERRY C. YOUNG, and GILES, HEDRICK & ROBINSON, P.A. directly caused the Order granting permission for Sheriff's forcible entry during recovery of personal property to be issued. The order's content was approved by William Vose, the sheriff's attorney. These Respondends intentionally violated the Petitioner's civil rights by not providing any procedure where she could voice any objections to the taking of her own items of personal property, gifts and inheritance that were originally awarded to her by the trial court.

The Fourth Amendment to the United States Constitution provides that every person shall be free from unreasonable searches and seizures.

See Tennessee v. Garner, 105 S.Ct. 1694, 1699, 85 L.Ed.2d.1 (1985). See Bell v. Wolfish, 441 U.S. 520, 559, 99 S.Ct. 1861, 1884, 60 L.Ed.2d. 447 (1979).

ISSUE FOUR

WHETHER THE RESPONDENTS WERE ACTING UNDER COLOR OF STATE LAW IN DEPRIVING THE PETITIONER, ELEANOR S. SIMPSON, OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS AND TO THE EQUAL PROTECTION OF THE LAW WHEN THE SHERIFF OF ORANGE COUNTY FLORIDA SOLD THE PETITIONER'S INTEREST IN HER MARITAL RESIDENCE TO HER FORMER HUSBAND, HAVING A VALUE IN EXCESS OF $100,000 FOR THE SUM OF $8,400.00 UNDER AN UNCONSTITIONALLY INFIRMED NOTICE OF SALE.

The trial and appellate court misaprehends, misconstrues or misreads the legal requirements for a Section 1983 action of violation of civil rights. The trial court in its order of July 10, 1989, as well as in its order of August 4, 1989, improperly imposes upon the Petitioner, the legal requirement to show

a conspiracy as part of her burden of proof under a Section 1983 action. The trial court's order improperly places upon the Petitioner, an unnecessary burden to proof a conspiracy with state court judges under Section 1983 which is not required.

There is no requirement under Title 42 United States Code Section 1983 for the Appellant to allege and prove a conspiracy. Parratt v. Taylor, supra. The only conspiracy element requirement is found in Title 42 United States Code Section 1985(3). Section 1985(3) was adopted to protect persons from being deprived of their federal constitutional rights because of their belonging to a protected class.

The Petitioner in this action is not required by law to rely on allegations of conspiracy to prove or show the under color of state law element under Title 42 U.S.C. Section 1983 claim. She has made sufficient allegations that the Respondents were acting under color of state law for that purpose. Additional proof of a comspiracy with the state judges is not a necessary element; private conspiracies are also covered. See Hobson v. Wilson, 737 F.2d 1 (D.C. Cir. 1984).

Even if a conspiracy element is required the Petitioner in this action has made a showing of supporting operative facts to show a conspiracy for her claims under 42 U.S.C. Section 1985(3). Petitioner believes that a jury could reasonably infer that after she had made numerous complaints about her ill

treatment in the state court from judges biased against women that the opposing parties and the opposing parties attorneys did conspire and operate together with the circuit court judges and sheriff to defeat and deprive her of her rights to due process substantively and procedurally and to further defeat and deprive her of her interest in her homestead and her other items of personal property on the basis of her sex. The jury could also reasonably infer that ELEANOR S. SIMPSON made numerous attempts to have the circuit court judges enforce her final judgment of dissolution by allowing her to have her interest in the house that was sold to DONALD M. SIMPSON under the Chapter 56 sale. A jury could also reasonably infer from the totality of the circumstance and the more than numerous coincidences that there was more

to what happended to ELEANOR S. SIMPSON than just mere coincidences.

Proof of a conspiracy is often difficult. Adickes v. Kress Co. 398 U.S. 144 (1970). No Respondent will admit such. The jury should be allowed to make its own decision as to the operative facts which have in fact been alleged and supported by competent evidence. The Petitioner has established a prima facia case to support her allegations. See Fisher v. Shamburg, 624 F.2d. 156 (10th Cir. 1980) (holding that a slight chance of conspiracy creates a genuine issue of fact.) Mrs. SIMPSON had complained that she wanted to be represented by an "unbiased" judge and that she did not feel that she had been represented by an "unbiased" judge.

In Parrat v. Taylor, 451 U.S. 527, 68 L.Ed2d. 420, 101 S.Ct. 1908(1981), this

Court noted that Section 1983 actions afford a civil remedy for deprivations of federally protected rights caused by persons acting under color of state law. The Fourteenth Amendment provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction, the equal protection of the laws.: Parrat, 451 U.S. 536.

The Petitioner has shown substantial evidence in the record before the Florida middle district court that the conduct complained of by the Respondents in this court were under color of state law, and that their conduct deprived her of her personal and real property without due

process of law, thus enabling here to sue under Section 1983.

REASONS FOR GRANTING A WRIT OF CERTIORARI

It is necessary and appropriate for this court to issue its Writ of Certiorari to review the per curiam affirmance decision of the Eleventh Circuit Court of Appeal affirming the dismissal with prejudice of the Petitioner's Third Amended Complaint for denial of due process and equal protection claims under Title 42, U.S.C. Section 1983 and 1985(3).

Essentially, the trial court and the Eleventh Circuit Court of Appeal have allowed the Respondents to utilize an unconstitutional state statute authorizing execution sales by the Sheriff to defeat and to deprive the

Petition, ELEANOR S. SIMPSON, of her property interest to her former marital residence and to further deprive her of her right to redeem her interest in that property prior to final deprivation.

It is necessary and proper for this court to exericise its Writ of Certiorari jurisdiction so as to protect the Petitioner's rights to due process and equal protection of the law. (See Gender Bias Study excerpts) and so as to bring the United States middle district and the Eleventh Circuit Court of Appeal decisions in conformance with the decisions of this court.

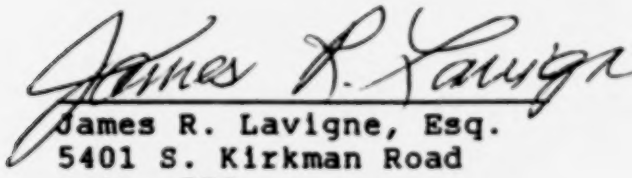
CONCLUSION

It is also necessary and proper for this court to issue its Writ of Certiorari so as to review the proceedings in the trial court below and in particular, to review the claims of

the Petitioner to denial of equal protection, especially, since the Florida supreme court itself has acknowledged that there is gender bias in the Florida court system which has directly affected Petitioner.

Dated this 5th day of February, 1991.

Respectfully Submitted



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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

SUPREME COURT CASE NO.

ELEANOR S. SIMPSON,
Petitioner

v.

DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A.; TANYA PLAUT, LAWSON LAMAR, SHERIFF OF ORANGE COUNTY, FLORIDA; AND MINNIE BRIDGES
Respondents

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT COURT OF APPEAL

VOLUME 1

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145 pp

IN THE UNITED STATES DISCTICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO.: 85-455-CIV-ORL

ELEANOR S. SIMPSON

Plaintiff,

vs.

DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., TANYA PLAUT, MINNIE BRIDGES, and LAWSON LAMAR, as Sheriff, Orange County, Florida,

Defendants.

_____/

THIRD AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, ELEANOR S. SIMPSON, by and through her undersigned attorney and sues the Defendants, DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., TANYA PLAUT, MINNIE BRIDGES, and LAWSON LAMAR, as Sheriff, Orange County, Florida, and shows unto the Court as follows:

ALLEGATIONS TO ALL COUNTS

1. At all times material hereto the Plaintiff, ELEANOR S. SIMPSON, was a resident of Orange County, Florida.

2. At all times material hereto the Defendant, DONALD M. SIMPSON, was a resident of Orange County, Florida.

3. At all times material hereto the Defendant, TERRY C. YOUNG, was a resident of Orange County, Florida, and was an attorney at law practicing at the lawfirm of GILES, HEDRICK & ROBINSON, P.A., 109 E. Church Street, Orlando, Florida who were at all times material hereto the acting attorneys for DONALD M. SIMSPON. At all times hereto, the Defendant, TERRY C. YOUNG, was an associate attorney, agent or employee of the Defendant, GILES, HEDRICK & ROBINSON, P.A., who were the attorneys for the Husband, DONALD M. SIMPSON.

4. At all times material hereto the Defendant, TANYA PLAUT, was a resident of Orange County, Florida and was a practicing attorney in Orlando, Florida.

5. At all times material hereto the Defendant, LAWSON LAMAR, was the sheriff of Orange County, Florida.

6. The Defendant, MINNIE BRIDGES, was at all times material hereto a resident of Orange County, Florida and a licensed real estate broker, who at all times material hereto owed the Plaintiff, ELEANOR S. SIMPSON, a fiduciary duty as a licensed real estate broker in the State of Florida.

COUNT ONE

COMES NOW the Plaintiff, ELEANOR S. SIMPSON, by and through her undersigned attorney, and sues the Defendants, DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., and alleges as

follows:

8. This is an action for damages and other relief under Title 42, U.S.C., Section 1983, for deprivation of Plaintiff's civil rights.

9. This court has jurisdiction of the subject matter and the parties hereto pursuant to Title 28, U.S.C., Section 1343(3).

10. At all times material hereto, the Defendants, DONALD M. SIMPSON, TERRY C. YOUNG and GILES, HEDRICK & ROBINSON, P.A. did act in collaboration and jointly, and under color of law of the State of Florida, to deprive the Plaintiff of her rights, privileges, or immunities secured by the United States Constitution and its laws, and who, through their collaboration or joint efforts did deprive the Plaintiff of her constitutional rights to due process and

her constitutional rights to own and hold property by way of homestead as is provided to other citizens of the State of Florida, by the Constitution of the State of Florida.

11. These Defendants, as more particularly hereinafter set forth, did under color of law of the State of Florida and the customs and usage of the State of Florida and the County of Orange, and in particular the sheriff's office of Orange County, did cause or subject the Plaintiff, a citizen of the United States, to the deprivation of her rights, privileges or immunities secured by the United States Constitution and the laws of the United States, by among other things, violating the Plaintiff's constitutional rights as follows:

A. By violating the Plaintiff's right to an impartial tribunal in civil

action number CI 81-12127, entitled, IN RE: The Marriage of Donald M. Simpson, Husband, and Eleanor S. Simpson, Wife, in the Circuit Court in and for Orange County, Florida;

B. By violating the Plaintiff's right to be free from assault and battery by their actions in causing the Plaintiff to be subject to assault and battery by a deputy sheriff of Orange County, Florida in her own residence;

C. By violating the Plaintiff's right to be free from false imprisonment by having the Plaintiff falsely imprinsoned as more hereinafter set forth;

D. By violating the Plaintiff's constitutional rights to be free from malicious prosecution, malicious abuse of process and unlawful attachment.

E. By violating the Plaintiff's constitutional right to be free from the knowing use of perjured testimony.

F. By violating the Plaintiff's right to having a fair trial by their procuring the absence of a material witness at the trial in civil action number CI 81-12127, entitled IN RE: The Marriage of Donald M. Simpson, Husband, and Eleanor S. Simpson, Wife, and by hiding and secreting evidence in the garage of TANYA PLAUT.

G. By denying to the Plaintiff her rights to due process before a final deprivation of her property, while acting under color of state law.

H. By denying the Plaintiff her right to freemon of enterprise by intentionally acting under color of state law to deprive the Plaintiff of her homestead property and former marital

residence by use of unconstitutional means of taking the Plaintiff's former marital residence away so as to deny her her continued occupation as a real estate agent in the area, and her rights to her "farm area" in the neighborhood where she resided for over twenty-two (22) years.

12. The Defendants, DONALD M. SIMPSON, TERRY C. YOUNG and GILES, HEDRICK & ROBINSON, P.A., did violate the Plaintiff's federal constitutional right to be heard in her dissolution proceeding by an impartial judge by obtaining the recusal of the original circuit Judge, Richard B. Cooper, and obtaining a reassignment of the original divorce action to William C. Gridley, a judge who the Defendants knew would be favorable to DONALD M. SIMPSON and hostile and biased against the Plaintiff, ELEANOR S. SIMPSON.

A. In fact, the Plaintiff, ELEANOR S. SIMPSON, did file a motion to recuse William C. Gridley as her judge on account of his bias and hostility toward her, which proceedings to remove William C. Gridley were vigorously and fraudulently opposed by these Defendants, with the result that the Plaintiff was unable to obtain the removal of William C. Gridley.

B. These Defendants knew of the open hostility and bias of William C. Gridley to ELEANOR S. SIMPSON, as it is in the public records and the transcript of the proceedings before William C. Gridley that the Plaintiff had no right to control how DONALD M. SIMPSON spent the Plaintiff's own funds and monies, when the Plaintiff strenuously objected to DONALD M. SIMPSON paying and using her funds and monies for the support of a

known prostitute and drug addict.

C. These Defendants did make false and fraudulent statements before the Fifth District Court of Appeal which prevented the Plaintiff from having William C. Gridley removed as the judge in her case, with the result that she was denied the right to have her dissolution proceedings tried by an impartial tribunal.

D. As a direct and proximate result of these Defendant's actions in the deprivation of her rights under color of the state statutes and the Florida Rules of Civil Procedures, the Defendants have caused the Plaintiff to suffer the loss and the deprivation of her rights as aforealleged and which resulted in a Final Judgment prepared by these Defendants and signed by William C. Gridley, which caused Plaintiff economic

damages in excess of $100,000.00, which Final Judgment was not in accordance with the federal law and the Former Spouses Protection Act, Public Law 97-252, and in accordance with Florida decisional law and statutory law on the rights of the Plaintiff in a dissolution proceeding.

13. These Defendants did violate the Plaintiff's right to be secure in her person as an aspect of the liberty protected by the due process of law clauses of the Fifth and Fourteenth Amendments of the United States Constitution, when these Defendants did intentionally cause to be issued from the Circuit Court in and for Orange County, Florida, an order for forceable entry, a copy of which is attached hereto as Exhibit "T", which order is unconstitutional on its fact.

14. In further support of this claim of violation of the Plaintiff's constitutional rights by these Defendants, the Plaintiff would show that on October 6, 1983, these Defendants did cause various and sundry deputy sheriff's of the Orange County Sheriffs Department to be present on more than one occasion at the Plaintiff's residence at 3207 Cullen Drive, Orlando, Florida, for the purpose of aiding and abetting these Defendants in the unconstitutional seizing of various items of personal property belonging to the Plaintiff which were not awarded to DONALD M. SIMPSON by the Circuit Court.

15. In particular, on October 6, 1983, the Defendants caused a deputy sheriff by the name of Mr. Ortega to go into the Plaintiff's former marital residence and to go into the former

marital residence with DONALD M. SIMPSON. Deputy Ortega was a hugh imposing figure who took his directions and orders from DONALD M. SIMPSON, and did allow DONALD M. SIMPSON to seize the take-numerous items belonging to the Plaintiff and not belonging to DONALD M. SIMPSON.

16. When the Plaintiff, ELEANOR SIMPSON, did object to the manner, method and the taking of some of her items of personal property to Deputy Ortego and did protest this action to DONALD M. SIMPSON, Deputy Ortega did without just or probable cause, assault and physically injur the Plaintiff, ELEANOR S. SIMPSON, by using clearly excessive force, and did directly cause the Plaintiff to suffer a fainting spell and did physically cause the Plaintiff to suffer various bruises and other injuries when he unlawfully and with clearly excessive force, placed the

Plaintiff under arrest and did place handcuffs on her.

17. At the time of her assault and battery by deputy Ortega, there were numerous persons observing the events who were shocked to see what they observed. The Plaintiff suffered extensive humiliation, anguish and mental suffering, and was caused to be placed under hospital care by Dr. Daniel Golywn.

18. The Plaintiff was unlawfully assaulted and battered by a deputy sheriff of Orange County, Florida, who presence at the Plaintiff's home on October 6, 1983, was procured by the Defendants, DONALD M. SIMPSON, TERRY C. YOUNG and GILES, HEDRICK & ROBINSON, P.A., as shown by that order for forceable entry, a copy of which is attached hereto as Exhibit "L". Plaintiff attaches as Exhibit "00", her

additional statements of fact of the actions of the Orange County Sheriffs Deputy on October 6, 1983 with the damages occurring to her.

19. The Plaintiff's constitutional rights to liberty also embraces a right to be free from false imprisonment and is safeguarded in a Section 1983 civil action. On October 6, 1983, the Defendants in this count did intentionally secure the false arrest of ELEANOR S. SIMPSON for resisting arrest without violence when at the time these Defendants knew and were vll aware of the Plaintiff's prior emotional problems from this action. In particular, these Defendants well knew that the Plaintiff had no capacity to perform a criminal intent to unlawfully resist arrest without violence. The Plaintiff believed she was protecting her own personal

property as awarded to her and allowed to he by a previous court order under Judge Richard Cooper.

20. On October 6, 1983, the Plaintiff was handcuffed by Deputy Ortega and taken to the Orange County jail and was held in the Orange County jail for several hours until she could secure her release.

21. The actions of the Defendants in obtaining a forceable entry order while she was pursing an appeal of the Final Judgment entered by the trial court on May 24, 1983, was done in bad faith and for the purposes of continued harassment, fraud and taking of undue advantage of Plaintiff.

22. These defendants did cause the arrest of the Plaintiff, a senior citizen and former spouse of a retired military serviceman, without an arrest warrant and without probable cause and in bad faith.

The sheriff failed to have sufficient policies and failed to properly instruct the deputy in the protection of Plaintiff's civil rights.

23. The order for forceable entry is on its face unconstitutional and void, since it denies the Plaintiff the right to an opportunity to be heard upon any objection of the properties taken by these Defendants, which were rightfully hers. These Defendants did procure said order knowing that it was unconstitutional and that it unconstitutionally denied the Plaintiff an opportunity to have a hearing on her claims of what items were being taken by DONALD M. SIMPSON and Deputy Ortega which were rightfully hers. Said order was unconstitutional in that it directed the arrest of the Plaintiff without giving her an opportunity to show cause why she

was not in violation of the court's orders. The Plaintiff is entitled to an order to show cause under the Florida Rules of Criminal procedure and her rights to procedural due process as guaranteed to her in the United States Constitution, was denied, in the manner in which she was assaulted and battered and unlawfully and falsely imprisoned on October 6, 1983 in her own home.

24. These Defendants did also violate the Plaintiff's rights to be free from malicious prosecution, malicious abuse of process and unlawful attachment, when they acted under "color of law" by having the Plaintiff criminally prosecuted for the alleged crime of resisting arrest without violence, for which there was no probable cause and from which criminal proceedings the plaintiff obtained a dismissal.

25. The Plaintiff was also subjected to malicious abuse of process by these Defendants when these Defendants did obtain from the Clerk of the Circuit court acting under color of state law, a writ of bodily attachment directed against the Plaintiff. A true and correct copy of said Writ of bodily Attachment is attached hereto and incorporated herein by reference as Exhibit "N". The Plaintiff was required to utilize the services of her then attorney, Ben Thompson, to defeat this unconstitutional attempt to have the Plaintiff physically arrested for a purely ministerial act. A writ of bodily attachment does not obtain under Florida law against the Plaintiff for the allegations made in that motion.

26. These Defendants did cause the Plaintiff to suffer a loss of her right

to be free from malicious abuse of process when these defendants did intentionally have issued, various process against her, including writs of garnishments against the Plaintiff's Merrill Lynch accounts, which motions and process were totally unfounded in Florida law, and unfounded in the facts of the situation facing the Plaintiff in this action, See motions and dismissal attached hereto as Exhibit "KK".

27. These Defendants were motivated to cause the Plaintiff to suffer malicious prosecution, malicious abuse of process and unlawful writ of bodily attachment, because of the Plaintiff's then refusal to comply with the terms and conditions of that letter dated May 31, 1983, addressed to the Plaintiff's attorney, Ben Thompson, a copy of which is attached hereto and incorporated

herein by reference as Exhibit "C", due to the Plaintiff's refusal to comply with that letter which she felt to be an extortionate attempt to force her in terms of settlement which were not fair or just to her, and when the case was on appeal for a different division of property in accordance with Public Law 97-252, Title X, "Uniformed Services Former Spouses Protection Act."

28. These Defendants did also act under color of state law by taking numerous steps and actions during the pendency of the Plaintiff's dissolution proceedings, to deny her a right to a fair trial by doing among other things, procuring the absence of a material witness by the name of Donna Jackson, whose testimony was crucial to the establishment of Plaintiff's claims for special equities, and in establishment of

the Plaintiff's claims that these Defendants and the trial judge were aiding and abetting the commissions of crimes in the Orange County. These Defendants did also deny the Plaintiff her rights to be heard at the final trial of this matter occurring on May 3, 4 and 5, 1983, and did otherwise produce perjured testimony to the court, and did otherwise deny the Plaintiff the right to obtain the testimony of her witnesses for the protection of her rights under the Federal Former Spouses Protection Act. See statement of Plaintiff attached hereto as Exhibit "A", "B" "MM", "NN", "OO", "pp", shoving additional violations.

29.These Defendants did also violate the Plaintiff's right to freedom of enterprise by preparing a false and fraudulent Final Judgment for execution

by the trial court which failed to award the Plaintiff her former marital residence, for which she was duly entitled after forty-two (42) years of marriage and many years of sacrifice on her part for the Defendant, DONALD M. SIMPSON. These Defendants knew that if the Plaintiff were denied her former marital residence that she would lose her "farm area" for her real estate business, which has resulted in economic damages to the Plaintiff in excess of $100,000.00.

30. These Defendants did also cause the Plaintiff a loss of her civil rights to a fair trial and impartial tribunal, by obtaining from William C. Gridlley on May 24, 1983, a fraudulent judgment against her, a copy of which Final Judgment is attached hereto and incorporated herein by reference as Exhibit "L".

31. The entry of said Final Judgment was done after Plaintiff had made numerous complaints objecting to the biasness and favoratism of William C. Gridley and his hostility to her. See additional Exhibits "A", "P", "R" and "U" attached hereto.

32. William C. Gridley has willfully refused to follow and allow the Plaintiff her federal rights under the Former Spouses Protection Act, known as Public Law 97-525. The Plaintiff had attempted to provide this law to William C. Gridley but he has refused to accept the same from her.

33. After the reassignment of the Plaintiff's dissolution action to William C. Gridley, the said William C. Gridley refused to honor the previous orders entered by the Honorable Richard C. Cooper, which previous judgment had

awarded to the Plaintiff the temporary sole exclusive use and occupancy of the parties former marital residence, and this judge did othervise set upon a course of conduct to rule against the Plaintiff on all of the other items of relief requested by her in her proceedings.

34. The Defendants, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., and DONALD M. SIMPSON did in fact draft the original Final Judgment of Dissolution entered in the Plaintiff's dissolution action as part of their combined efforts to defeat and deprive the Plaintiff of her constitutional rights to equal protection and due process and in an attempt to punish her for her complaints of unfair treatment and bias and prejudicial handling of her cause by the Circuit Court then setting.

35. These Defendants did act together under color of law to violate the Plaintiff's constitutional rights as above enumerated.

36. As a direct and proximate result of the intentional acts and actions of these Defendants acting under color of law, the Plaintiff, ELEANOR S. SIMPSON, has been caused to suffer compensatory damages in excess of Five Hundred Thousand ($500,000.00) Dollars for the deprivation of her civil rights and for the mental anguish, physical pain and suffering, embarassment, public humiliation and additional legal expenses incurred by the Plaintiff in protecting her civil rights.

37. The Plaintiff has complied with all conditions precedent required of her to maintain this action.

WHEREFORE, the Plaintiff, ELEANOR S. SIMPSON, sues the Defendants, DONALD M. SIMPSON and TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., for compensatory damages in excess of Five Hundred Thousand ($500,000.00) Dollars, and punitive damages in excess of Five Hundred Thousand ($500,000.00) Dollars. The Plaintiff demands trial by jury, costs and attorney's fees as allowed to her under Title 42, U.S.C., Section 1983, and such other and further relief as this court deems mete and just, including the ordering of a new trial for Plaintiff in the state court on her property rights and other rights upon dissolution of marriage.

COUNT TWO

COMES NOW the Plaintiff, ELEANOR S. SIMPSON, by and through her undersigned attorney and sues the Defendants, DONALD

M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., TANYA PLAUT, LAWSON LAMAR and MINNIE BRIDGES, and alleges as follows:

38. This is an action for damages and other relief under Title 42, U.S.C., Section 1983 for the deprivation of Plaintiff's civil rights.

39. This court has jurisdiction of the subject matter and the parties hereto pursuant to Title 28, U.S.C., Section 1343(3).

40. At all times material hereto, the Defendants, DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., TANYA PLAUT, LAWSON LAMAR and MINNIE BRIDGES, did act in collaboration or jointly and under color of law of the state of Florida, to deprive the Plaintiff of her rights, privileges and immunities secured to her by the United

States Constitution and its laws, and who, through their collaboration or joint efforts did deprive the Plaintiff of her constitutional rights to her federal constitutional rights to due process and her federal constitutional rights to equal protection of the law, and her constitutional right to own and hold property before final deprivation thereof under color of law.

41. These Defendants are liable to the Plaintiff for the violation of her rights as guaranteed to her under Title 42, U.S.C., Section 1983, and in particular, her constitutional rights to due process of law before final deprivation of her property, her rights to equal protection of the law, and her right to freedom of enterprise as more particularly set forth in the following facts:

A. On May 24, 1983, the Circuit Court in and for Orange County, Florida, civil action number CI 81-12127, entitled IN RE: The Marriage of DONALD M. SIMPSON, Husband, and Eleanor S. Simpson, Wife, before the Honorable William C. Gridley, Circuit Judge, although entering a fraudulent Final Judgment of Dissolution of Marriage between ELEANOR S. SIMPSON and DONALD M. SIMPSON, did award to ELEANOR S. SIMPSON an equal interest in the marital home of the parties, legally described as follows, to-wit:

> Lot 2, Block D. Lake Conway Estates, Section 1, according to the plat thereof, as recorded in Plat book "X", page 37, Public Records of Orange County, Florida, a/k/a 3207 Cullen Drive, Orlando, Florida

a true and correct copy of said Final Judgment of Dissolution of Marriage is attached hereto as Exhibit "L".

B. Prior to the entering of said

Final Judgment by William C. Gridley, a Judge of the Orange County Circuit Court, the Plaintiff had forwarded written correspondence dated May 9, 1983 to said Judge regarding her federal rights under Federal law #97-252.

C. On May 17, 1983, William C. Gridley, Circuit Judge, returned Plaintiff's correspondence unopened to Plaintiff's then attorney, Ben Thompson.

D. On may 24, 1983, William C. Gridley entered the Final Judgment attached as Exhibit "L" hereto, which in effect was completely adverse to the claim and requests for relief -requested by the Plaintiff as punishment for the Plaintiff's previous complaints of unfair treatment by Judge Gridley as shown by Plaintiff's Motion to Recuse and Disqualify and Petition for Writ of Prohibitions, denied by the Florida Fifth District Court of Appeal. Copies of said documents were attached to Plaintiff's First Amended Complaint as composite Exhibit "C".

E. During the pendency of the dissolution proceedings in the Circuit

Court in and for Orange County, Florida, bearing civil action number CI 81-12127, the Plaintiff, ELEANOR S. SIMPSON, did retain the legal services of TANYA PLAUT, Esq., to represent her in various aspects of her dissolution proceeding. After taking an unsuccessful appeal to the Fifth District Court of Appeal, State of Florida, the Defendant, TANY PLAUT, did file her Motion to withdraw from representing the Plaintiff, ELEANOR S. SIMPSON, to which the Plaintiff, ELEANOR S. SIMPSON objected. The stated purpose of the Defendant, TANYA PLAUT for withdrawing for representing ELEANOR S. SIMPSON was to avoid being sued for malpractice and to avoid representing Plaintiff in a landmark case like Bogart v. Bogart, 490 So.2d 43 (Fla. 1986), Difendorfer v. Difendorfer, 491 So.2d 265, and Pastore v. Pastore, 11 FLW 495

So.2d (Fla. 1986), pertaining to Plaintiff's rights to division of military retirements under federal law 97-252 as property. Notwithstanding the objection of the Plaintiff, the Circuit Court in and for Orange County, Florida, William C. Gridley presiding, did allow TANYA PLAUT to withdraw from her representation of the Plaintiff as lead counsel 10 days prior to implementation of Public Law, 97-252 on February 8, 1983, to the prejudice of Plaintiff.

F. At the hearing before the Honorable William C. Gridley on the Motion to Withdraw of the Defendant, TANYA PLAUT, did expressly advise the court that she did not need to have a lien placed on the assets of ELEANOR SIMPSON for the payment of her legal fees, and expressly waived the same and did not request protection or enforcement

of her attorney's fees, if any.

G. Notwithstanding the clear law of Florida, that an attorney is not entitled to an attorney's fees after withdrawing from a case without justification, the Defendant, TANYA PLAUT, did file in bad faith, a civil action against the Plaintiff, ELEANOR S. SIMPSON, in the Circuit Court in and for Orange County, Florida, bearing case number CI 83-4444. Notwithstanding the objections of the Plaintiff, the Circuit Court in and for Orange County, Lon S. Cornelius presiding, did enter a judgment on behalf of TANYA PLAUT, P.A., in the total amount of $8,013.87 on January 19, 1984 only 2 days after a per curiam affirmance from the Fifth District Court of Appeal of Florida. On March 26, 1984, the Defendant, TANYA PLAUT, P.A., acting under color of law, did cause a Notice of

Sheriffs Levy to be filed upon the homestead property described in 11(A) of the Plaintiff, ELEANOR S. SIMPSON.

H. LAWSON LAMAR, as sheriff of Orange County, under direction from TANYA PLAUT, did issue a Notice of Sheriffs Sale advertising the sale of the Plaintiff's homestead for April 30, 1984 between the legal hours of 11:00 a.m. before noon and 2:00 p.m in the afternoon on said date, to the highest bidder was entered by LAWSON L. LAMAR, the Sheriff of Orange County, Florida through Sgt. Stuart Trainum, a Deputy Sheriff of Orange County, Florida. A true and correct copy of said notice is attached to this Third Amended Complaint as Exhibit "F". Said notice is fatally defective and void for vagueness and unconstitutional since it did not specifically advise the Plaintiff of when

her house would in fact be sold.

I. The Plaintiff had reasonably interpreted the sheriffs notice of sale as meaning that she could bid on her homestead property at any time between the legal hours of 11:00 a.m. and 2:00 p.m., and that if in fact she were the highest bidder, she would in fact protect her property interest and would not lose her property interest. This is the procedure the Plaintiff understood was in existence in matters of this kind, and there was nothing in the sheriffs notice advising the Plaintiff that she had to be present at exactly 11:00 a.m. at the East Door of the Orange County Courthouse to bid on the property. In fact, the Plaintiff reasonably believed that she could submit a bid at any time between the hours of 11:00 a.m. and 2:00 p.m. on the 30th day of April, 1984. The

Plaintiff did appear at the Orange County Courthouse between the hours of 11:30 a.m. and 12:30 p.m. on the 30th day of April, 1984, and did present herself at the enforceable writs office of LAWSON L. LAMAR, as Sheriff of Orange County, Florida, and did specifically demand and make request of Sgt. Trainum to be allowed to make a bid higher than the bid made by DONALD M. SIMPSON, which the deputy arbitrarily refused.

J. The Defendant, LAWSON L. LAMAR, as Sheriff of Orange County, Florida, did deny the Plaintiff her constitutional rights to due process by not putting the Plaintiff on notice of the exact procedure to be followed by the Sheriffs department in the conducting of its sheriffs sale of the Plaintiff's former marital residence as described in the notice of sheriff's sale. The sheriff,

LAWSON LAMAR, by and through his authorized deputy sheriff, Sgt. Trainum, did wrongfully refuse to accept from Plaintiff her cash bid for an amount higher than that bid by DONALD M. SIMPSON, and did issue his deed to DONALD M. SIMPSON, per copy attached hereto as Exhibit "G".

K. The Notice attached hereto as Exhibit "E", is further constitutionally void for vagueness since it reasonably put Plaintiff on notice that she could be the highest bidder at any time between 11:00 a.m. and 2:00 p.m., not just at 11:00 a.m., it did not put the Plaintiff on notice that she could not redeem her property prior to the 2:00 p.m deadline. Since the sale of the Plaintiff's property in this action, the Sheriff has instituted a new policy advertising that the public sale will commence at 11:00

a.m. where as the attached notice does not so advise. This is a material change from the prior official policy of the Sheriffs Department which had only advertised the hours between which the sale would occur. This is a denial of the Plaintiff's right to procedural due process to be advised of the time when her home would be sold, and is also a denial of the Plaintiff's rights to due process to be advised of any deadlines to redeem her property.

L. Prior to the public sale scheduled on April 30, 1984, the Plaintiff had filed an emergency motion to prevent the sale of her homestead property and had called it up for a hearing before the Honorable Lon S. Cornelius. A true and correct copy of said Motion and Notice of Hearing is attached hereto and incorporated herein

by reference as Exhibits "C" and "D". The judge, as noted in the transcript, unconstitutionally refused to allow Plaintiff to argue her motion. At said hearing, the Plaintiff did advise TANYA PLAUT and the Honorable Lon S. Cornelius, that the property was her homestead and was not subject to sale by TANYA PLAUT, and that further the sale of the property was stayed during the pendency of her appellate proceedings which were then in effect. Notwithstanding the request of the Plaintiff to Lon S. Cornelius to prohibit the sale, said Judge refused to prohibit the sale because of its animosity to Plaintiff due to Plaintiff's complaints of unfair treatment by the other judges. A copy of the order of Denial is attached hereto as Exhibit "BB". After the hearing held on April 26, as requested by the Plaintiff

representing herself with Judge Lon Cornelius, the Plaintiff did notice that the Defendant, TANYA PLAUT had additional ex-parte contact and communications with Lon S. Cornelius. The Plaintiff did observe TANYA PLAUT go into the same doors leading to the chambers where Judge Cornelius has his office. Shortly after that, the Plaintiff was informed that the Judge had denied her emergency motion to prevent the sale of her homestead of twenty-two (22) years.

M. When the Plaintiff arrived at the enforceable writs office of Sheriff LAWSON LAMAR on April 30, 1984 between 11:30 a.m. and 12:30 p.m., she discovered that DONALD M. SIMPSON was the sole and only bidder at the public sale, and that the public sale was in fact held at 11:00 a.m. and that DONALD M. SIMPSON was allowed to bid the amount of the

judgement held by TANYA PLAUT for an interest owned by the Plaintiff in a value in excess of One Hundred Thousand ($100,000.00) Dollars (Fair Market Value of $235,000.00, less $17,000.00 mortgage - $218,000.00 divided by 2 - $109,000.00). The Plaintiff was present at the sheriff's enforceable writs office with sufficient funds to redeem her interest in her homestead between 11:30 a.m. and 12:30 p.m. on April 30, 1984, but was denied the right to redeem by Stg. Trainum acting as a deputy sheriff for LAWSON LAMAR, as sheriff of Orange County, Florida. Said deputy sheriff was acting under the official policy of LAWSON LAMAR, in his denial of the Plaintiff's right to redeem with sufficient funds, her interest in her homestead property. The Plaintiff at that time did also discover that the

sheriffs department did allow DONALD M. SIMSPON additional time and opportunity after 11:00 a.m. April 30, 1984 in which to obtain the funds to pay for his bid. The Plaintiff, however, was unconstitutionally denied this opportunity. In fact, the Plaintiff saw DONALD M. SIMPSON coming out of the office of the enforceable writs division as she was going in to make her bid.

N. The Plaintiff did make numerous objections and complaints about the handling of the sale and did file a Motion to Vacate, a copy of which is attached hereto as Exhibit "II", which the Circuit Court illegally denied.

O. The Defendants, DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., TANYA PLAUT individually and acting on behalf of TANYA PLAUT, P.A., and LAWSON LAMAR, as Sheriff of

Orange County, Florida, did act in collabotation and together and under color of law, to defeat the Plaintiff of her property rights and other rights of due process.

P. The Plaintiff's Motion to Vacate the Sale was illegally denied by Circuit Judge Lon S. Cornelius, notwithstanding the numerous cases submitted to the court showing that said sale was improper. The sale was also void eonsidering the fact that at the time of the public sale, the Defendant, DONALD M. SIMPSON, was indebted to the Plaintiff in the amount of Twenty Thousand ($20,000.00), and when at the time considered the Defendant, DONALD M. SIMPSON had purchased the Plaintiff's interest in her homestead property with Plaintiff's own funds and monies from a certificate of deposit illegally cashed in by the Defendant,

DONALD M. SIMPSON, in violation of prior court orders. See Exhibit "AA" attached hereto (supersedeas bond).

Q. The Defendants have combined to defeat the plaintiff of her homestead property and farm area for her real estate business without due process of law and in violation of the Plaintiff's rights to enjoy and own real property and homestead and exemption from forced sale by creditors of the home to which she has lived in excess of twenty-two (22) years because she was then a single woman head of her own household, and a former military wife.

42. The Defendant, MINNIE BRIDGES is liable to this Plaintiff since this Defendant, MINNIE BRIDGES did intentionally and maliciously collaborate and act in connection with TERRY YOUNG and DONALD M. SIMPSON, GILES, HEDRICK &

ROBINSON, P.A., LAWSON LAMAR and TANYA PLAUT to quickly place the Plaintiff's former marital residence for sale without the consent, and over the direct objection of the Plaintiff to this Defendant. This Defendant, MINNIE BRIDGES, did work with and collaborate with these Defendants, and did in fact sell the Plaintiff's former marital residence the first day said property was listed on the multiple listing service at a price approximately $60,000.00 below fair market value of $235,000.00 in an attempt to defeat and punish and deprive the Plaintiff of her property rights. The Plaintiff had previously furnished to this Defendant, MINNIE BRIDGES, a copy of the stay order and copies of various documents with the Appellate Court showing that the sale of said property was previously stayed and that the

property could not be sold until final resolution of the Plaintiff's appeal of her Final Judgment of Dissolution of Marriage proceedings. Notwithstanding the fiduciary duty owed to this Plaintiff, this Defendant, MINNIE BRIDGES, did willfully and intentionally cause this Plaintiff to suffer the loss of her property rights by her extremely quick sale of the Plaintiff's former marital residence in collaboration and conjunction with the actions of the other Defendants named herein. See also Exhibits "GG" and "HH" and "I" attached hereto.

43. These Defendants acted together under color of law to defeat and deprive the Plaintiff of her rights to own and hold property in Florida, and did further act under color of Florida law to give a fatally defective and void notice of

public sale, and to otherwise mislead and deceive the Plaintiff in acting to her detriment and by not otherwise giving the Plaintiff a final opportunity for redemption of her homestead interest and property interests and rights prior to final forfeiture of her interest therein, which is a violation of the Plaintiff's rights to equal protection of law.

44. As a direct and proximate result of the Defendants actions herein, the Plaintiff has been caused to suffer the loss of her civil rights as guaranteed to her under Title 42, U.S.C. Section 1983 and has been denied her rights to procedural due process, to have an opportunity to redeem her interest in the subject property before final deprivation, to her rights to substantive due process and to equal protection of the law, by not being allowed to own

homestead property as allowed to other persons similarly situated.

WHEREFORE, the Plaintiff, ELEANOR S. SIMPSON, sues the Defendants, DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., TANYA PLAUT, LAWSON LAMAR, and MINNIE BRIDGES, for conpensatory damages in excess of Five Hundred Thousand ($500,000.00) Dollars, and punitive damages in excess of Five Hundred Thousand ($500,000.00) Dollars, for the deprivation of her civil rights and for the mental anguish, physical pain and health problems presented to her, embarrasment, public humiliation and legal expenses incurred by the Plaintiff in protecting her civil rights herein. Plaintiff demands trial by jury, costs and attorneys fees as allowed to her under Title 42, U.S.C., and such other and further relief as this court deems

mete and just. including the setting aside of the sheriff's sale.

COUNT THREE

COMES NOW the Plaintiff, ELEANOR S. SIMPSON, by and through her undersigned attorney and sues the Defendants, DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., TANYA PLAUT, LAWSON LAMAR and MINNIE BRIDGES, and alleges as follows:

45. The plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 44 above as if herein fully set forth.

46. In holding the public sale of the Plaintiff's property on April 30, 1984, the Defendants operated under Florida Statute 56.22. Said statute is an unconstitutinal deprivation of the Plaintiff's rights to procedural due process. The Statute is fatally void in

that it does not require that there by a specified time for the public sale under forced execution. Said statute only provides that all sales of property under legal process shall take place between the hours of 11:00 a.m. and 2:00 p.m. of any day of the week except Saturday and Sunday, and shall continue from day to day until such property is disposed of. Said statute is consitutionally void for vagueness and fails to give the Plaintiff procedural due process of the exact time to be at the courthouse for the public sale of her property, as is required of other judicial sales procedures under Florida Statute 45.031. Florida Statute 45.031 properly requires that the notice contain the time and place of sale.

47. Florida Statute 56.22, which is the statute under which the Defendants acted in their efforts to defeat and

deprive the Plaintiff of her real property in Florida, does not give reasonable notice to the Plaintiff and did not in fact, give reasonable notice to the Plaintiff of the time she was required to be at the courthouse for the sale of her property. Said statute on its face, will lead a reasonable person to believe that the person would be available at the courthouse between the hours of 11:00 a.m. and 2:00 p.m. to participate in the sale. Said statute does not advise and does not put any reasonable person on notice that all sales of property under legal process shall commence at exactly at 11:00 a.m. Said statute does not advise any reasonable person that the failure to arrive before 2:00 p.m. of the same day of sale, may result in the property of said person being sold prior to the

arrival of the affected party.

48. Florida Statute 56.22 as applied in the instant action, as shown by the Notice of Public Sale of the sheriff, is unconstitutionally fatally defective and did in this action, defeat and deprive the Plaintiff of her constitutional rights to procedurel due process as guaranteed to her through United States Constitution, Fourteenth Amendment.

49. The application of Florida Statute 56.22 by the Defendants in the sale of her property on April 30, 1984, was done under the color of state law to defeat and deprive the Plaintiff of her property interests without sufficient procedural due process safeguards.

50. Florida Statute 56.22 should be declared constitutionally void for vagueness and constitutionally void for failure to require that the Sheriff give

an exact time for the sale as is required under Florida Statute Section 45.031(1).

51. The Plaintiff has been denied equal protection of the law since there is no rational, reasonable basis for the difference of treatment of forced judicial sales procedures between Florida Statute 45.031(1) and Florida Statute 56.22.

52. The Deed given by the Defendant, LAWSON LAMAR, Sheriff to the Defendant, DONALD M. SIMPSON, a copy of which is attached hereto as Exhibit "G", should be set aside for the constitutional violation hereinabove cited of the Plaintiff's civil rights.

WHEREFORE, the Plaintiff sues Defendants, DONALD M. SIMPSON and LAWSON LAMAR, Sheriff of Orange County, for declaratory judgment from this court declaring as follows:

A. That Florida Statute 56.22 as applied in the instant action is unconstitutionally void for vagueness and is an unconstitutional denial of the Plaintiff's civil rights to procedural due process and the right to reasonable notice of forced sale of her property.

B. That this court enter its declaratory judgment that the sale of the Plaintiff's homestead interest to DONALD M. SIMPSON on April 30, 1984 is void as a matter of law, due to the unconstitutional procedures employed by the Defendants in this action, operating under Florida Statute 56.22.

C. That this court declare that Florida Statute 56.22 is an unconstitutional denial of Plaintiff's civil rights to equal protection of the law, since there is no rational, justificable basis in law or fact, for

the difference in treatment of execution sales under Florida Statute 56.22 and public sales under Florida Statute 45.031(1).

D. That this court grant such other and further relief as it deems mete and just in declaring the statutory procedures utilized above to be unconstitutional, and to grant the Plaintiff such damages as will compensate her and place her in a position she was in prior to the unconstitutional deprivation of her civil rights to procedural due process and equal protection of the law.

COUNT FOUR

COMES NOW the Plaintiff, ELEANOR S. SIMPSON, by and through her undersigned attorney and sues the Defendants, DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., TANYA PLAUT,

LAWSON LAMAR and MINNIE BRIDGES, and alleges as follows:

53. The Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 52 above as if therein fully set forth.

54. This is an action for damages and other relief under Title 42, U.S.C., Section 1985(3), which provides:

> "If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any state or territory from giving or securing to all persons within such state or territory the equal protection of the laws; ... in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in futhernance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against

any one or more of the conspirators."

55. This court has jurisdiction of the subject matter and the parties hereto pursuant to Title 28, U.S.C., Section 1343(3).

56. The Defendants did conspire, agree and operate and collaborate with each other and with the Clerk of the Circuit Court of Orange County and the Circuit Court Judges of Orange County, under color of Florida law, to defeat the Plaintiff of her constitutional rights to a fair trial and impartial tribunal and to due process and equal protection of the law, and to own real property in the State of Florida because of her status as a female former spouse of a retired military serviceman. In particular, the Plaintiff would show unto this court that at the initiation of the dissolution proceedings between her and her husband,

the Honorable Richard C. Cooper was the presiding judge. After an initial hearing on temporary relief requested by the Plaintiff, the Honorable Richard C. Cooper unexpectedly and without explanation, did recuse himself from the dissolution action. The Defendants, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., and DONALD M. SIMPSON, did in a conspiracy with the Clerk of the Circuit Court of Orange County, Florida, had the dissolution action transferred to William C. Gridley, a Circuit Judge, in and for Orange County, Florida, with the expressed intent and purpose of obtaining a judge favorable to DONALD M. SIMPSON. This was the initiation of the conspiracy of the Defendants to defeat and deprive the Plaintiff of a right to a fair trial and fair and equal treatment in the Circuit Court in and for Orange County,

Florida, and the right to own homestead property in Florida.

A. After the reassignment of the Plaintiff's dissolution action to William C. Gridley, the said William C. Gridley refused to honor the previous orders entered by the Honorable Richard C. Cooper, and did set upon a course of conduct to rule against the Plaintiff on all the items of relief requested by her in her dissolution action due to her numerous and strenuous complaints of unfair and prejudicial treatment.

B. During her dissolution proceedings in the Orange County Circuit Court, the Plaintiff did on numerous occasions complain of the bias and prejudicial conduct of William C. Gridley toward her. She had in fact filed a Motion to Recuse said judge. However, said motion was denied on the appellate

level because of fraudulent statements made by TERRY C. YOUNG on behalf of GILES, HEDRICK & ROBINSON, P.A., and DONALD M. SIMPSON, and as a result of the willful failure and refusal of TANYA PLAUT to advise the Plaintiff of the outcome of the appellate proceedings, and specifically her refusal and failure to advise the Plaintiff that she had filed an improper appeal, and of her refusal to represent the Plaintiff any further, and withdrawing from the Plaintiff at a time which prejudiced the Plaintiff's rights to have William C. Gridley removed.

C. The Defendant, DONALD M. SIMPSON and TERRY C. YOUNG and GILES, HEDRICK & ROBINSON, P.A., did fraudulently have William C. Gridley enter a Final Judgment against the Plaintiff in her dissolution action.

D. After the entry of the Final Judgment of dissolution in May, 1983, the Plaintiff continued to complain of her unfair treatment by William C. Gridley, the Plaintiff filed various statements of fact showing abuse and other documents which are attached to this complaint as Exhibits "A", "P", "Q", "R" and "U".

E. Because of her continued complaints of unfair treatment and denial of her constitutional rights, the Defendants, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., DONALD M. SIMPSON, TANYA PLAUT, LAWSON LAMAR and MINNIE BRIDGES were able to work with and operate together with the Circuit Court judges to defeat and deprive the Plaintiff of her constitutional rights to substantive and procedural due process of law to own and hold real property in Florida as homestead, and to be treated

the same as other citizens to have her homestead protected in an effort to punish her for the exercise of her constitutional rights to complain about the unfairness and the corruption of the judicial proceedings against her, as shown by composite Exhibits "A", "B", "MM", "NN", "OO", and "PP" attached hereto.

57. There is no reasonable explanation for the failure of the Circuit Judges of Orange County to set aside the public sale of Plaintiff's property to DONALD M. SIMPSON, since the failure of said judges to set aside the public sale was erroneous as a matter of Florida law and as a matter of Federal Constitutional law, other than as part of a combination and conspiracy of these Defendants to punish the Plaintiff for her speaking out against the

unconstitutional atrocities she believed were being committed against her, and for her freedom of speech in complaining about the aiding and abetting of crime by the Circuit Judges of Orange County, by allowing DONALD M. SIMPSON to supply a known drug addict and prostitute with funds and monies belonging to the Plaintiff.

58. There is no reasonable explanation for the failure of Claude R. Edwards and Lon S. cornelius to set aside the public sale of Plaintiff's property to DONALD M. SIMPSON, since the failure of said judges to set aside the public sale is erroneous as a matter of Florida law. Lon S. Cornelius and Claude R. Edwards, did intentionally refuse and fail to consider the Plaintiff's claims of her homestead property and her claims that her interest in the homestead

property was not properly sold and that the interest of Plaintiff in her homestead property was sold for an outragiously and fraudulently low (at least $100,000.00 under fair market value) amount and should be set aside as part of a conspiracy among the Defendants to defeat and deprive the Plaintiff of her homestead property. There is no other reasonable explanation for the failure of the Circuit Court Judges of Orange County, Florida to protect the rights and interest of the Plaintiff, other than as alleged in this Third Amended Complaint.

59. The Defendants acted together under color of Florida law to defeat and to deprive the Plaintiff of her rights to own and hold property in Florida, and did further act under color of Florida law to give a fatally void Notice of Public

Sale, and to otherwise mislead and deceive the Plaintiff in acting to her detriment, by not being at the public sale at precisely 11:00 a.m. in an effort to defeat her of her right to own property under Florida law.

60. The Defendants conspired together to defeat the Plaintiff of an opportunity to redeem her property within a reasonable amount of time after forced sale as is allowed in other mortgage foreclosures and lien foreclosure under Florida law. This was part of a conspiracy to deny the Plaintiff of not only procedural due process but of equal protection of the law as further shown by Plaintiff's additional statement of facts attached hereto as Exhibit "A", "B" "MM", "NN", "OO", and "PP".

61. As a direct and proximate result of the Defendants actions, the Plaintiff

has suffered a loss of her civil rights as guaranteed to her under Title 42, U.S.C., Section 1983, and has been denied her rights to procedural due process, substantive due process and equal protection of the law, by not being allowed to own homestead property as other heads of household.

62. These Defendants did conspire among themselves and among the judges of Orange County, Florida to deprive the Plaintiff equal protection of the laws of the State of Florida to own and hold homestead property as part of a class based discrimination against wives of former military serviceman.

63. None of the Circuit Judges, including Lon S. Cornelius, William C. Gridley and Claude R. Edwards were pleased with the Plaintiff's numerous and vociferous complaints about her unfair

treatment and denial of her rights to equal protection as a former wife of a retired military serviceman. See Exhibits "A", "P", "R", "Q" and "U".

64. On numerous occasions, while representing herself, and appearing before Lon S. Cornelius, William C. Gridley or Claude R. Edwards, it appeared to the Plaintiff that these judges had previously made their decisions and in fact, at the hearing before Claude R. Edwards on the Motion to Set Aside the Writ of Possession, the Plaintiff was forced into the hearing over her objection prior to her being able to present herself properly, and when she entered the room, it appeared to her that ex-parte communications had been made, and that she would not be given a fair opportunity to present her request for relief.

65. The purpose of the Defendants conspiracy was to directly or indirectly to deprive the Plaintiff of her equal privileges and immunities to own and hold properties and to further punish her for her attampts to voice her rights as a former military spouse under the "Uniformed Services Former Military Spouses Protection Law", Public Law 97-252".

WHEREFORE the Plaintiff, ELEANOR S. SIMPSON, sues the Defendants, DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., TANYA PLAUT, LAWSON LAMAR and MINNIE BRIDGES for compensatory damages in excess of Five Hundred Thousand ($500,000.00) Dollars for the deprivation of her civil rights and for additional mental anguish, physical pain and health problems, embarrassment, public humiliation and legal expenses

incurred by the Plaintiff in protecting her civil rights, and punitive damages in excess of Five Hundred Thousand ($500,000.00) Dollars. The Plaintiff demands trial by jury, costs and attorneys fees as allowed to her under Title 42, U.S.C., and such other and further relief as this court deems meet and just.

COUNT FIVE

COMES NOW the Plaintiff, ELEANOR S. SIMPSON, by and through her undersigned attorney and sues the Defendants, DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., TANYA PLAUT and LAWSON LAMAR, and alleges:

66. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 65 above as if herein fully set forth.

67. The Plaintiff, ELEANOR S. SIMPSON, has been denied her constitutional right to own and hold homestead property as other citizens in the State of Florida are allowed to, and in particular, has been denied her constitutional right to assert her homestead exemption to the property in which she was a resident for a period of over twenty-two (22) years. The Plaintiff, ELEANOR S. SIMPSON has been denied the equal protection of the laws as guaranteed to her by the United States Constitution as implimented by Title 42, U.S.C., Section 1983, since the Florida constitutional provision in effect at the time of the forced sale of her homestead, disalloved the forced sale of homestead of married or single persons who were the head of a household with two or more persons, but not for single women who

were heads of their own households, and did not give to Plaintiff a United States constitutinally required protection of equal treatment of the law. Plaintiff was discriminated against because of her status as a former wife of a retired military officer.

68. Article X, Section 4 of the Constitution of State of Florida, (1972) is unconstitutional as applied in the instant action, since the Plaintiff was entitled to claim her former marital residence as her separate homestead property, since she was the head of her own household unit making all the mortgage payments, insurance and tax payments through July, 1983.

69. The refusal of the Defendants to allow the Plaintiff to claim homestead exemption under Article X, Section 4 of the Constitution of the State of Florida,

was a denial of the Plaintiffs' rights to procedural and substantive due process and in effect unconstitutinally discriminated against the Plaintiff on the basis of her sex, and on the basis of her being a single head of her own family unit, consisting of herself, in violation of Title 42, Section 1985(3), U.S.C.

WHEREFORE the Plaintiff sues the Defendant, DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., TANYA PLAUT, and LAWSON LAMAR, Sheriff and request that this court enter declaratory relief, judging and declaring that the application of Florida Constitution Article X, Section 4 in the instant action unconstitutionally deprived the Plaintiff of her rights to substantive and procedural due process and equal protection of the law, and that this court enter such other and further

relief as to place the Plaintiff as best as possible, in the position she was in prior to the unconstitutionally deprivation of her civil rights, including the awarding of any monetary damages as may be appropriate or the entering of an order of this court mandatorily requiring the reconveyance of the Plaintiff's homestead property to her, or such other and further relief as this court deems mete and just.

COUNT SIX

COMES NOW the Plaintiff, ELEANOR S. SIMPSON, by and through her undersigned attorney and sues the Defendant, DONALD M. SIMPSON and shows unto the court as follows:

70. The Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 44 above as if herein fully set forth.

71. This court has pendant jurisdiction of the subject matter and the parties hereto.

72. This is an action for declaration of a resulting or constructive trust and such other and further relief as is equitable and just.

73. On or about April 30, 1984 at 11:00 a.m., the Defendant, DONALD M. SIMPSON and his attorney TERRY C. YOUNG, who at all times material hereto was acting as an associate or employee of the Defendant, GILES, HEDRICK & ROBINSON, P.A, who were at all times material hereto, the lawfirm acting on behalf of DONALD M. SIMPSON, did in violaltion of the Plaintiff's constitutional civil rights as above alleged, purchase at a public sale, the Plaintiff's equitable interest in that real property described above worth $109,000.00 for the

outrageously and fraudulently low sum of $8,410.00.

74. Immediately thereafter, the Defendant, DONALD M. SIMPSON, did place said property for sale with MINNIE BRIDGES, who then immediately sold said property for a substantial amount below its fair market value in an effort to deprive the Plaintiff of her property rights. See Exhibits "GG", and "HH" attached hereto.

75. The Defendants, DONALD M. SIMPSON and TERRY C. YOUNG and GILES, HEDRICK & ROBINSON, P.A. and MINNIE BRIDGES, did immediately sell the former homestead property on May 15, 1984 for $175,000.00 and $60,000.00 under fair market value, and closed on June 22, 1984, as shown by copy of deed attached hereto as Exhibit "I", of the Plaintiff inan effort to defeat the Plaintiff of her equity

interest in said property to punish her for exercising her right to appeal the prior final judgment of dissolution.

76. The Defendants refused to allow the Plaintiff to redeem her interest in said property although she immediately tried to do so before 12:00 noon on the same date as the public sale was held. Said Defendants objected and prevented her from obtaining the redemption of her property, and had Plaintiff's Notice of Lis pendens, See Exhibit "H", stricken by the court.

77. The Defendant, DONALD M. SIMPSON's purchase of the Plaintiff's interest in the aforedescribed real property in the manner described, and his refusal to reconvey one-half of said property to the Plaintiff or account for and pay over one-half of the sales price to Plaintiff, constitutes a breach of the

Defendants' duties as agent for the Plaintiff to hold the property in both names, since the same was awarded to both parties pursuant to the Final Judgment attached hereto as Exhibit "L". Moreover, at all times material hereto the Defendant, DONALD M. SIMPSON, owed Plaintiff $20,000.00 under paragraph 13 of the final judgment, which he had not paid during times material hereto.

78. The Defendant, DONALD M. SIMPSON, was married to the Plaintiff for a period of over forty-two (42) years and at the time he purchased the Plaintiff's equitable interest in the aforesaid described real property, owed a duty to the Plaintiff to deal fairly and justly with her and her equitable interest in her homestead property and further owed her a duty not to use Plaintiff's money to purchase Plaintiff's interest at the

public sale on April 30, 1984. In fact, the Defendant, DONALD M. SIMPSON, purchased the Plaintiff's interest with the Plaintiff's money as shown by Exhibit "AA" and "L" attached hereto.

79. The equitable interest of the Plaintiff was constructively acquired and held by the Defendant, DONALD M. SIMPSON, after his purchase of the same at forced sale pursuant to the final judgment attahced hereto as Exhibit "L", or in the alternative, a resulting trust did occur with the Defendant, DONALD M. SIMPSON, at the forced sale of the Plaintiff's homestead property. The Defendant, DONALD M. SIMPSON, did use ill begotten gain from the sale of Plaintiff's equitable interest to purchase that property as described in copy of special warranty deed attached hereto as Exhibit "J".

80. This Plaintiff is entitled to a declaratory judgment of this court declaring that the Defendant, DONALD M. SIMPSON, did reacquire and hold the equitable interest of the Plaintiff, ELEANOR S. SIMPSON, to that real property described in Exhibit "J", above in a constructive or resulting trust, and that he is liable to the Plaintiff for the diminution in value of her equitable interest in said property.

81. The Defendants, DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., have willfully and wrongfully deprived the Plaintiff, ELEANOR S. SIMPSON, of her property rights to the former marital property in an effort to defeat Plaintiff of her property rights as guaranteed to her under the United States Constitution and federal laws, Title 42, U.S.C., Section

1983.

82. The Defendants, DONALD M. SIMPSON, TERRY C. YOUNG and GILES, HEDRICK & ROBINSON, P.A., have willfully used an unconstitutionally and fatally defective Florida Statutory procedure under Florida Statute 56.22, by deliberately giving to the Plaintiff vague and a confusing notice of public sale and did intentionally operate under an otherwise unconstitutionally defective Florida Statute 56.22 in an effort to defeat and deprive the Plaintiff of her United States unconstitutionally guaranteed federal right to own and hold property as other persons similarly situated.

WHEREFORE the Plaintiff sues the Defendants, DONALD M. SIMPSON, and demands judgment as follows:

A. That this court declare and adjudge that the Defendant, DONALD M. SIMPSON, did reacquire the equitable interest of the Plaintiff in and to that real property described as follows:

Lot 2, Block d. Lake Conway Estates, Section 1, according to the plat thereof, as recorded in Plat Book "X", Page 37, Public Records of Orange County, Florida

to be held in a constructive or resulting trust for the benefit of the Plaintiff for the use and benefit of the Plaintiff and that the Plaintiff holds and owns an equitable interest to the real property described in Exhibit "J" attached hereto.

B. That this court require this defendant to account to the Plaintiff for the use and benefit of said homestead property, and the subsequent sale of the same, and for all profits and proceeds received for the sale of the same.

C. That this court enter its money judgment against the Defendant for the loss of the equitable value of the Plaintiff's homestead property with interest, costs and attorneys fees.

D. That this court enter judgment for compensatory damages in excess of One Hundred Thousand ($100,000.00) Dollars for the loss of possession and use of the Plaintiff's homestead property.

E. That this court enter its judgment for punitive damages in excess of One Hundred Thousand ($100,000.00) Dollars against this Defendant.

F. That this court grant such other and further relief as is equitable and just.

COUNT SEVEN

COMES NOW the Plaintiff, ELEANOR S. SIMPSON, by and through her undersigned attorney and sues the Defendants, DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., and TANYA PLAUT, MINNIE BRIDGES and LAWSON LAMAR, and alleges unto the court as follows:

83. The Plaintiff repeats and realleges each and every allegation contained in paragraph 1 through 52 above as if herein fully set forth.

84. This court has pendant jurisdiction of the subject matter and the parties hereto. This action is under Title 42, U.S.C., Section 1985(3).

85. Prior to the institution of this action, the Defendants, DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., and TANYA PLAUT, did conspire together or in the alternative did collaborate and work together with the judges involved to defeat and defraud the Plaintiff of her homestead property as more particularly described in Count I above.

86. In particular, Plaintiff would further show unto the Court that the Defendant, TANYA PLAUT did maliciously

cause to be filed in the Circuit Court in anf for Orange County, Florida civil action number CI 83-4444, an action seeking damages against the Plaintiff at a time when said Defendant knew that it had no right to seek damages against the Plaintiff because of her unjustified withdrawal of her representation of the Plaintiff in CI 81-12127.

87. The purpose of the filing of civil action CI 83-4444 by the Defendant, TANYA PLAUT was in furtherance of a conspiracy scheme, agreement, fraud or device to defeat the Plaintiff, ELEANOR S. SIMPSON of her homestead property rights to that property described in paragraph 10A above for her previous complaints of judicial unfairness.

88. The Defendant, TANYA PLAUT, in furtherance of a conspiracy, scheme, agreement, fraud or device to defeat the

Plaintiff, ELEANOR S. SIMPSON because of the Plaintiff's complaints to TANYA PLAUT of her malpractice against the Plaintiff in civil action number CI 81-12174 (SIC) did file her suit.

89. The Defendant, TANYA PLAUT did obtain a final judgment against the Plaintiff and pursuant to a scheme, conspiracy, artifice, agreement or collaboration with DONALD M. SIMPSON and TERRY C. YOUNG, did cause the homestead property of the Plaintiff to be sold on April 30, 1984 at public sale on the steps of the Orange County Courthouse knowing at all times that the Plaintiff, ELEANOR S. SIMPSON did have sufficient other assets in which to satisfy the judgment of TANYA PLAUT, and knowing that a stay in the dissolution proceeding prohibiting the sale of Plaintiff's homestead was in effect at all times

material hereto and knowing there were other assets from which to be paid.

90. At all times material hereto the Defendant, TANYA PLAUT owed a continuing duty to the Plaintiff, ELEANOR S. SIMPSON even after her withdrawal from representation of said Plaintiff not to take any steps or to commit any acts resulting in substantial prejudice and loss of property rights to a former client, or to acquire adverse interest to a former client. The Defendant, TANYA PLAUT, did breach her continuing duty after the relationship of attorney/client had been terminated, not to purchase or acquire an adverse title or interest against Plaintiff, her former client, especially when such action involved a breach of the confidence imposed upon said Defendant by the Plaintiff, and also constituted use by TANYA PLAUT to the

clients disadvantage of information or knowledge obtained by reason of said relationship of her attorney/client.

91. The Defendants, DONALD M. SIMPSON, TERRY C. YOUNG and GILES, HEDRICK & ROBINSON, P.A., did owe to the Plaintiff a duty to protect and not to acquire a greater interest in the homestead property of the Plaintiff other than what was awarded to said Defendants by the Final Judgment attached hereto as Exhibit "L", other than to have a lien for any payment of judgments on the property jointly held by said parties.

92. The Defendant, TERRY C. YOUNG, owed a duty to the Plaintiff not to take unfair advantage of her distressed situation, and further owed to the Plaintiff a duty to insure that the Final Judgment of dissolution of marriage attached hereto as Exhibit "L", was

carried out with respect to the ownership of the subject property by DONALD M. SIMPSON and ELEANOR S. SIMPSON in equal shares.

93. Defendant, MINNIE BRIDGES, owed a realtors fiduciary duty to Plaintiff to deal fairly and honestly. See Exhibits "HH" and "II".

94. The Defendants did willfully, maliciously and intentionally breach their duties owed to the Plaintiff to punish Plaintiff for exercising her constitutional rights to freedom of speech and due process as guaranteed by the United States Constitution.

95. As a direct and proximate result of the breach of duty owed to the Plaintiff by the Defendants herein, the Plaitiff has been caused to suffer the loss of her equitable value of her homestead property interest of over

$100,000.00, and has been further caused to suffer emotional distress, mental anguish, embarrassment, humiliation and loss of use of her homestead property and other compensatory damages in excess of Five Hundred Thousand ($500,000.00) Dollars.

96. This Plaintiff is entitled to punitive damages against each of the named Defendants herein due to the gross, willful or malicious conduct of the Defendants against the Plaintiff in excess of Five Hundred Thousand ($500,000.00) Dollars.

WHEREFORE, the Plaintiff sues the Defendants and demands judgment for compensatory damages in excess of $500,000.00 and punitive damages in excess of $500,000.00, and demands trial by jury and costs and attorney's fees as allowed by law.

COUNT EIGHT

COMES NOW the Plaintiff, ELEANOR S. SIMPSON, by and through her undersigned attorney and sues the Defendants, DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., and LAWSON LAMAR as Sheriff of Orange County, and alleges:

97. This court has pendant jurisdiction of the subject matter and the parties hereto.

98. This is an action for false arrest.

99. The Plaintiff is entitled to relief against the Defendants based upon the following facts:

A. On October 6, 1983, the Defendants, DONALD M. SIMPSON, TERRY C. YOUNG, and GILES, HEDRICK & ROBINSON, P.A., as a prelude to thier continued conspiracy to defeat and deprive the

Plaintiff of her rights to own personal and real property in Florida, as above alleged, did cause to be issued out of the Circuit Court in and for Orange County, Florida, case number CI 81-12174 (SIC), various civil processes as shown in the attached Exhibit "T", authorizing the Sheriff of Orange County, Florida to enter the homestead of the Plaintiff, ELEANOR S. SIMPSON, at a time when the Defendants, DONALD M. SIMPSON and TERRY C. YOUNG knew that the Plaintiff was in a very precarious mental state, suffering from severe state of depression and suffering from other emotional problems as a direct result of the abuse of grocess of the Defendants in attempting to enforce a Final Judgment attached hereto as Exhibit "L". Such Order violated Plaintiff's federal due process of law. The order was wholly outside the

scope of Gridley, exercise of Judicial authority, and in violation of U.S.C., Title 42, Section 1983.

B. On October 6, 1983, while in her own home, the Defendants, DONALD M. SIMPSON and TERRY C. YOUNG, did cause the Plaintiff to be put under arrest for protecting her personal items of property in possession to which she has held over forty (40) years in violation of Plaintiff's civil rights. Plaintiff is sixty-five (65) years old and a senior citizen. See attached Exhibit "OO" setting forth additional facts in support of this claim.

C. In particular, the Plaintiff was arrested by a deputy sheriff of LAWSON LAMAR without an arrest warrant or probable cause and without proper supervision or proper training in protecting Plaintiff's civil rights. The

Defendant LAWSON LAMAR was aware of the illegal nature of the aforesaid writ, since the sheriff was represented at the hearings involved, but did individually, and in particular, allow his deputy sheriff to enter the home of the Plaintiff for the purpose of assisting and aiding the Defendants, and with the further purpose of punishing the Plaintiff for her resistance to the unlawful prior writ of the Circuit Court, knowing at the time when the Plaintiff did not possess the requisite mental capacity to commit such crimes as alleged by the deputy sheriff of LAWSON LAMAR. LAWSON LAMAR knowingly served an illegal forceable writ of entry. Under the Sheriff's instructions, the Deputy refused to allow Plaintiff to go the the final court hearing on the TANYA PLAUT suit but instead took Plaintiff to jail

as part of the conspiracy to defeat and deprive Plaintiff of her civil rights to freedom from false arrest and due process.

D. Said charges were subsequently dismissed by the State Attorney's office of Orange County, Florida based upon the written opinion of psychiatrist, Daniel H. Golwyn, M.D., that the Plaintiff suffered from depression and extreme stress during the two (2) years immediately prior to October 6, 1983, relating to a divorce from her husband, DONALD M. SIMPSON of forty-two (42) years. It was the opinion of said Dr. Golwyn that the mental state of the Plaintiff was so disturbed that her ability to differentiate right from wrong was severally impaired. The Plaintiff had believed she was protecting her marital home and its contents from

unlawful attempts to take all of her personal belongings, gifts, and inheritance, and more than what was order by the court pursuant to the Final Judgment of Dissolution.

E. The Plaintiff was in a state of emotional shock and fell to the floor in exhaustion with her being handcuffed and arrested at the instance of the Defendants, DONALD M. SIMPSON and TERRY C. YOUNG. The Plaintiff was placed in handcuffs and incarcerated for about six hours that day, when she was released and brought to the mental health ward at Orlando Regional Medical Center, Holiday Division, Tower 6, and admitted. At the time of her admission she was physically exhausted and severally depressed. Plaintiff was not released from the hospital until October 12, 1983.

F. The Defendants did maliciously participate with each other in an abuse of process by having the Plaintiff falsely arrested and causing her great mental anguish and physical abuse, and suffering as part of a conspiracy to deny her civil rights as more fully alleged in Exhibits "B", "MM", "NN", "OO" and "PP", attached hereto.

G. The Plaintiff was caused to employ the services of an attorney to have the charges against her dismissed.

H. As a further direct and proximate result of the Defendants acts complained of herein, the Plaintiff has been caused to suffer severe mental anguish, public embarrassment and humiliation.

WHEREFORE, the Plaintiff, ELEANOR S. SIMPSON, sues the Defendants, DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., and LAWSON LAMAR, for

compensatory damages in excess of $500,000.00, punitive damages in excess of $500,000.00 each and such other and further relief as this court deems mete and just and demands trial by jury, costs and attorney's fees as allowed by law.

COUNT NINE

COMES NOW the Plaintiff, ELEANOR S. SIMPSON, by and through her undersigned attorney and sues the Defendant, DONALD M. SIMPSON, TERRY C. YOUNG, and GILES, HEDRICK & ROBINSON, P.A., and alleges as follows:

100. In violation of Title 18, U.S.C., Section 2520, the Defendants, DONALD M. SIMPSON, TERRY C. YOUNG, and GILES, HEDRICK & ROBINSON, P.A. did cause to be placed in the Plaintiff's personal phone, an electronic eavsedropping device.

101. The Plaintiff did discover the existence of such electronic device

during the month of March, 1984.

102. The Plaintiff is unaware of exactly how long said electronic device was planted in her home telephone, but alleges and believes it was for a period in excess of twenty-four (24) months.

103. The Defendants, DONALD M. SIMPSON, TERRY C. YOUNG, and GILES, HEDRICK & ROBINSON, P.A., have invaded the personal rights of privacy of the Plaintiff by intercepting and disclosing or using in violation of Title 18, U.S.C., Section 2520 various communications of the Plaintiff through her private home telephone.

104. The Plaintiff has been caused to suffer mental anguish, embarrassment, humiliation and the loss of her privacy, and has been caused to suffer monetary damages by the disclosure of various statements and the judicial proceedings

used against her in her dissolution proceedings.

105. The Defendants have intentionally violated Title 18, U.S.C., Section 2520 and are liable to her for her attorney's fees and court costs and punitive damages.

106. In particular, the Plaintiff would show unto the court that the Defendant TERRY C. YOUNG, did make use of and make disclosure to the Fifth District Court of Appeal during the oral arguments of the Plaintiff's appeal of her dissolution proceedings of various alleged statements, including that the Plaintiff was going to sell various Hummels, which these Defendants knew was untrue. This information was obtained by the unlawful interception of Plaintiff's home telephone and was a complete mischaracterization and misrepresentation

of the statements made by the Plaintiff while said in the privacy of her own home phone.

107. The Defendants, DONALD M. SIMPSON and TERRY C. YOUNG, individually and as an authorized agent for GILES, HEDRICK & ROBINSON, did also disclose and use to the other circuit judges involved in the Plaintiff's dissolution proceedings, other confidential communications made by the Plaintiff, as a result of the unlawful interception and electronics eavsdropping of Plaintiff's home phone. Said Defendants made misrepresentations and falsified and attributed the Plaintiff's various statements she did not make, but only could have known by the use of unlawful electronic devices.

WHEREFORE the Plaintiff sues the Defendants, DONALD M. SIMPSON, TERRY C. YOUNG and GILES, HEDRICK & ROBINSON, P.A.

for compensatory and punitive damages in excess of Five Hundred Thousand ($500,000.00) each, and demands trial by jury and demands costs and attorneys fees as allowed by said section of the United States Code.

Filed May 27, 1983

IN THE CIRCUIT COURT IN AND
FOR ORANGE COUNTY, FLORIDA

CIVIL ACTION NO. CI-81-12127

IN RE: The Marriage of

DONALD M. SIMPSON,

Husband,

and

ELEANOR S. SIMPSON,

Wife.

_____/

FINAL JUDGMENT

THIS ACTION was heard before the Court on May 3, 4 and 5, 1983. On the evidence presented, it is hereby ORDERED AND ADJUDGED that:

1. The bonds of marriage between Husband, DONALD M. SIMPSON, and Wife, ELEANOR S. SIMPSON, are dissolved a vinculo matrimonil because the marriage is irretrievable broken.

2. All of the stocks held by the

parties, as reflected on the Addendum Updating Joint Stipulation of Assets of the Parties, shall be equally split and divided among the parties, with all odd shares incapable of division being sold and/or liquidated with the proceeds from same being equally divided.

3. All of the mutual funds held by the parties, as reflected on the Addendum Updating Joint Stipulation of Assets of the Parties, shall be equally split and divided among the parties, with all odd shares incapable of division being sold and/or liquidated with the proceeds from same being equally divided.

4. The certificate of deposit currently held by the parties at First Federal Seminole Savings and Loan Association, shall be equally split and divided among the parties upon maturity.

5. All jointly held cash in the form of broker accounts, including Merrill Lynch account #76262120 and money market funds, shall be split and equally divided between the parties.

6. All other cash and cash accounts and municipal bonds currently held by each respective party shall be retained by each party as presently held and listed on the Addendum Updating Joint Stipulation of Assets of the Parties.

7. All of the KEOGH accounts of ELEANOR S. SIMPSON, as listed on the Addendum updating Joint Stipulation of Assets of the Parties, shall be retained by ELEANOR S. SIMPSON for her exclusive use and benefit.

8. ELEANOR S. SIMPSON is hereby awarded as permanent, periodic alimony fifty percent (50%) of the net disposable proceeds of DONALD M. SIMPSON's retired

U.S. Army pay entitlement. DONALD M. SIMPSON shall pay said fifty percent (50%) of the net disposable proceeds of his retired U.S. Army pay entitlement once a month, on or before the fifth (5th) day of each month, to the Clerk of the Circuit Court, Ninth Judicial Circuit in and for Orange County, Florida, and the Clerk shall promptly remit said monies to ELEANOR S. SIMPSON, whose present address is 3207 Cullen Lake Shore Drive, Orlando, Florida. There is assessed as costs for handling each such payment the additional sum of Two Dollars ($2.00) which DONALD M. SIMPSON shall pay to the Clerk each time payments are made. Such payments plus cost are to be made by either cash, postal money order, American Express money order, bank draft, cashier's check or certified check.

9. DONALD M. SIMPSON is hereby awarded his 1979 Chevrolet Monte Carlo, boat, guns, fishing equipment, tools, accessories and other personal effects, and ELEANOR S. SIMPSON is hereby awarded her 1980 Cadillac and other personal effects in recognition of the approximate equal value of each parties' said property.

10. All personal property listed and scheduled on the MJM appraisals, Inc., Attachment C to Husband's current financial affidavit as of April 21, 1983, shall be equally divided by the parties through agreement on the basis of the listed valued therein within ten (10) days of entry of this Final Judgment. However, if the parties cannot agree upon such division, upon proper motion before this court, the court shall make said division.

11. The parties shall each be awarded equal interest in the marital home, and the house shall be partitioned through a public sale in the event the parties have not sold the house themselves within six (6) months from the date of the entry of this Final Judgment. All net proceeds from the sale shall be equally distributed between the parties.

12. ELEANOR S. SIMPSON shall be awarded the temporary use and possession of the said marital home until said sale.

13. ELEANOR S. SIMPSON is awarded the sum of TWENTY THOUSAND DOLLARS ($20,000.00) as restitution and reimbursement of one-half (1/2) of the marital assets which were expended by DONALD M. SIMPSON.

14. There shall be no other awards of alimony, periodic, rehabilitative or lump sum, other than set forth above.

15. There are no findings of any special equities whatsoever as a result of the acquisition of the marital estate through the joint efforts of the parties without contribution from any sources wholly unconnected with the marriage.

16. There shall be no award of attorney's fees and each party shall be responsible for their own attorney's fees and costs.

17. There shall be no further adjustment of the equities bewteen the parties other than set forth above.

18. Any and all other orders of Court which conflict with this final judgment are hereby vacated.

19. The court being advised of the Husband's agreement to voluntarily assign all Survivor benefits of Military Retirement Pay to the Wife, such voluntary assignment is incorporated

herein and the parties are directed to execute all written documents necessary now, or in the future, to comply herein.

20. All parties shall perform all acts and do all things necessary and cooperate with one another to effectuate the intents, purposes, and directions of this order within ten (10) days from the date of the entry of this final judgment.

DONE AND ORDERED in Chambers at Orlando, Florida this 24th of May, 1983.

/S/ WILLIAM C. GRIDLEY, CIRCUIT JUDGE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to Terry C. Young, Esquire, P.O. Box 2631, Orlando, Florida 32802 and Ben W. Thompson, Esquire, P. O. Box 466, Dade City, Florida 33525 by mail this 24th of May, 1983.

/S/ Secretary of above Circuit Judge

IN THE CIRCUIT COURT
IN AND FOR ORANGE
COUNTY, FLORIDA

CIVIL ACTION NO. CI81-12127

IN RE: The Marriage of

DONALD M. SIMPSON

Husband

and

ELEANOR S. SIMPSON

Wife

_____/

ORDER GRANTING PERMISSION FOR SHERIFF'S FORCEABLE ENTRY DURING RECOVERY OF PERSONAL PROPERTY

THIS CAUSE having come on for hearing before me the 30th day of September, 1983, upon the Husband's Motion for an order permitting the Sheriff's Forceable Entry During Recovery of Personal Property, and the Court having heard argument of counsel and being otherwise fully advised in the premises, it is thereupon

ORDERED AND ADJUDGED that said Motion is hereby granted; and that the Orange County Sheriff's Department is hereby authorized by this Court to "break into" or otherwise forceably enter the premises of 3207 Cullen Lake Shore Drive, Orlando, Orange County, Florida in the event it become necessary for the purpose of carrying out this Court's order of the 19th day of August, 1983, a copy of which is attached hereto, and the Writ of Attachment in order to obtain the subject property identified and described therein. It is further

ORDERED AND ADJUDGED that the Orange County Sheriff's Department shall execute upon said Order and Writ as fully as possible and to such extent that the subject property is reasonably identifiable. If is further

ORDERED AND ADJUDGED that the Orange County sheriff's Department is authorized to arrest any person interfering with the execution of this Order or Writ. On any such arrest, the arresting officer is to contact the attorney for the Husband, Terry C. Young, 425-3591; the attorney for the Wife, Ben Thompson, (904)567-3080 and the Court at 420-3246 and is to bring the subject person immediately before the undersigned judge for .... unavailable for a hearing on the day of the arrest, bond is set on the contempt charge of $500, conditioned on the accused appearing before the Court at a future time scheduled by the Court.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 4th day of October, 1983.

/S/William C. Gridley
Judge of the Circuit Court

I HEREBY CERTIFY that a true and copy

of the foregoing has been furnished to Mr. Ben W. thompson, Post Office Box 466, Dade City, Florida 33525, Attorney for Wife; Mr. Terry C. Young, Post Office Box 2631, Orlando, Florida 32802, Attorney for Husband, and Mr. William C. Vose, 2400 W. 33rd Street Orlando, Florida 32809, Staff Attorney for Sheriff of Orange County by mail/hand delivery this 4th day of October, 1983.

/S/Gay Aaron
Secretary to above Circuit Judge

IN THE CIRCUIT COURT
IN AND FOR ORANGE
COUNTY, FLORIDA

CIVIL ACTION NO.:
CI-81-12127

IN RE: THE MARRIAGE OF
DONALD M. SIMPSON

Husband, FILED: JUNE 9, 1983

and

ELEANOR S. SIMPSON,

Wife.

FACTS - SHOWING THE ABUSE OF JUSTICE AND THE SHAM OF THIS TRIAL

1. Denial and evidence of fraud and embezzlement.
2. Denial of testimony of key witnesses for wife.
3. Complete disregard of Judge Cooper's orders from previous hearings, covering an 8 month period at great expense.
4. Complete disregard of the NEW FEDERAL BILL No. 97-252.

5. Denial of testimony of Lois Jones, an expert on Bill No. 97-252, because she was fraudulently called a lobbyist, which she IS NOT, AND NEVER HAS BEEN. She is the President of National ACTION For Former Military Wives, a non-profit organization.
6. Complete disregard of undue coercion, concealment, collusion, harassment and perjurous testimony of husband, acting in concert with husband's attorney.
7. Denial of my constitional rights for a fair and unbiased trial. (Malicious obfuscation of critical testimony and evidence to wife's case----Calculated Obstruction of Justice.)
8. Denial of continuance for HEALTH REASONS, at the cost of wife of $75,000.00 in additional attorney's fees, and extreme mental anguish (aggravating diagnosed ulcers and

colitis.)

9. Denial of Donna Jackson's testimony, husband's 26 year old paramour and an admitted drug addict, due to sequestering of same.

10. Denial of Donna Jackson's deposition into evidence by Terry Young, Esq. (he deliberately and knowingly--- witheld it from a scamed court file) thereby preventing cogent, pertinent evidence, crucial to wife's case.

11. Betrayal of Trust fund by Terry Young, Esq., husbands, attorney. (Mis-appropriation of joint assets, designated for a specific trust.)

/S/ ELEANOR S. SIMPSON,
WIFE

I hereby certify that a true and correct copy of the foregoing has been furnished to Terry C. Young, Esquire, P.O. Box 2631, Orlando, Florida 33524

and to William C. Gridley, Circuit Judge in and for Orange County, Florida-in open court by hand by me on this 9th day of June, 1983.

/S/ ELEANOR S. SIMPSON, WIFE
3207 Cullen Lake Shore Drive
Orlando, Florida 32812

Judicial Qualifications Committee
Florida Bar
Congress of the United States
Senate of the United States
President of the United States
Gov. of the State of Florida
Sec. of the Army
Sec. of the Navy
Sec. of Defense
Dept. of Defense
Supreme Court of the United States
Supreme Court of the State of Florida

SUPREME COURT OF U.S. #84-313
WRIT OF CERTIORARI - DENIED
10/15/84

ORANGE COUNTY, FLORIDA

5th District Ct. of Appeal
#84-959

FIFTH DISTRICT COURT OF APPEAL
#82-1501

#83-825 (Tanya Plaut)-Homestead

CIRCUIT COURT CASE NO. 85-8931
U.S. District Court - Middle Div. Orl. Div #85-455

SIMPSON VS SIMPSON

DISSOLUTION OF MARRIAGE

CIVIL ACTION #81-12127

(Tanya Plaut) #83-4444

FORCEABLE ENTRY #83-007376
STATE OF FLORIDA VS. ELEANOR SIMPSON
MO83-7376

Facts:

1. In my opinion, Terry Young, attorney for Donald M. Simpson was retained on a percentage basis in marital law. Percentage of money he was to get for Donald M. Simpson and for Donald M.

Simpson's Mission in Life, Donna Jackson (27 year old drug addict, prostitute, married woman with $100 to $240 a day drug habit). The tactics and methods used to deplete the life assets, mislead the court, waste the taxpayers money is scandalous and should be investigated!!!

2. Terry Young was previously reported to the Florida Bar for having betrayed his trust account and perjury that was used for over three years.
3. In December, 1981 the Simpson Estate was worth $600,000. As of Dec. 1984 Eleanor S. Simpson's Estate is worth less than $100,000. Through Extortion and fraud Terry Young planned a forced Sheriff Sale of Eleanor Simpson's Homestead of 22 years, together with Tanya Plaut, attorney (withdrew from Simpson divorce case in Jan. 1983 10

days prior to trial for the implementation of new Federal Law 97-252 (Title X). Judge Gridley allowed Tanya Plaut to withdraw on the grounds she might be sued for malpractice by Eleanor S. Simpson. Tanya Plaut had been retained to have Judge Gridley recuse himself from the Simpson vs. Simpson dissolution on the grounds of Prejudice and fear of not being allowed a fair trial!! (See Travesty of Justice & Sham of the Trial).

4. The final judgment which Judge Gridley accepted was written in its entirety by Donald M. Simpson who completely ignored the new Federal law 97-252 where Eleanor S. Simpson was to be the Landmark case in the State of Florida on the military retirement being divided as property (not alimony from the Clerk of the Court of Orange

County) in an Eqitable Distribution State which Florida is!

5. Eleanor Simpson not only earned the right to 50% of the gross military retirement and 50% of the Martin Pension after a 43 year marriage with 24 in the military service since all her real estate commission moneys earned in 22 yrs. in real estate were used to purchase stocks and bonds (liquid assets held by Merrill Lynch Stock Brokers, purchased joint tenants with right of survivorship, and all dividends and interest were always declared on a joint IRS return until May 1983. Donald M. Simpson refused to allow Eleanor Simpson to have an insurance annuity of her own with the $350,000 earned in real estate over and above what she had earned as a military wife!!

6. By having a Sealed file, Terry Young, maliciously withheld all charts or any evidence that Eleanor Simpson was the only wage earner in the State of Florida from 1978 to the trial. Blackmale was used by Terry Young to divide the Merrill Lynch assets equally after Eleanor Simpson's attorney, Mr. Ben Thompson of Dade City, Florida had taken the final judgment to the 5th District Court of Appeals due to the inequitable division of the marital assets and the withholding of evidence of the $80,000 to $90,000 that had been mispent against Judge Cooper's original restraining orders for the preservation of lifetime assets prohibiting the invasion of the Merrill Lynch assets until trial!!!

7. Terry Young repeatedly told the court that Eleanor Simpson did not have a special equity when he knew how successful she had been in real estate - $350,000 purchased Bearer Bonds 1980-1981 plus stocks and bonds since 1963 (See IRS returns!!!

8. The military retirement was supposed to be retroactive if the judge awarded a percentage to the ex-spouse. Why wasn't it?

9. Terry Young maliciously used two different appraisals for the division of Eleanor Simpson's personal belongings and convinced Judge Gridley Donald M. Simpson was to be the appraiser. In spite of proof of gifts and inheritance, Eleanor Simpson's personal belongings were stolen from her October 6, 1983 by forceable entry by the Sheriff's department of Orange

County, Florida where Gestano tactics were used and Eleanor S. Simpson was put in handcuffs in her own home while she was protesting her property and taken to jail in Orange County. Such abuse of process!!!

10. No IRS returns were ever used or sent over to the 5th District Court of Appeals. Why???

11. Terry Young told the 5th District Court of Appeals at the hearing Jan. 17, 1983 with the liquid assets that were divided Eleanor Simpson was assured an income of $35,000 a year. After debt and legal fees were paid by Eleanor Simpson she was assured an income of $15,000 a year. Reverse psychology was continuously used Terry Young as that is what Donald M. Simspon was assured of then went back to work at the Martin Company with a

starting salary of at least $35,000 and all the benefits---Conn. General which he refused to continue for Eleanor Simpson.

12. Donald M. Simpson purchased our 22 year homestead at 3207 Cullen Lake Shore Dr., Orlando, Florida for $8500 with Eleanor Simpson's restitution money! He redeemed a $20,000 C.D. at Coral Gables Federal Savings and Loan Association in March prior to the Sheriff's sale on the Courthouse steps ----Fraud and Extortion used by Terry Young. The C.D. was an empty C.D. and was supposed to be a supercedes bond held in trust by the Clerk of the Court of Orange County. The $20,000 was to be paid in June, 1983 to Eleanor S. Simpson in the event she wished to purchase the homestead at a reduced price or list it with her real

estate firm after the division of the Merrill Lynch stocks and bonds had been divided equally so Donald M. Simpson could purchase a home. (See Transcript of June 9th hearing in 1983, Ready, Willing and Able letter written to Ben Thompson by Terry Young in June 1983 and final transcript Sept. 1984 in Judge Gridleys Chamber where it was revealed the Supercedes bond was not held in trust. Terry Young tried to say he had just heard about Donald M. Simpson redeeming it directly from Coral Gables when he knew in March 1984 he and Tanya Plaut set Donald M. Simpson up so he could be paid his legal fees with all my equity of 22 years. Donald M. Simpson took a $90,000 loan with Sun Bank in Spring using his half interest in the marital home while it was on appeal!!!

ABUSE OF PROCESS

13. Judge Lon Cornelius should have set the Sheriff's sale aside as it was for less than fair market value at Donald M. Simpson's buy in figure!!!

14. Judge Claude Edwards ordered Eleanor Simpson out of her homestead of 22 years with only 24 hours notice. The homestead was sold by Donald M. Simpson as the sole owner, Lis Pendens was removed by Judge Cornelius and Judge Gridley and all this happended prior to the 5th District Court of Appeals dismissing Mary Steddom's rehearing for the 5th District gave a per curiam affirmed without an opinion Jan. 17, 1983. 3207 Cullen Lake Shore Dr. listed and sold in one day for $50,000 to $60,000 under fair market value for $175,000.

15. Eleanor Simpson is a senior citizen who has been denied the right to private property ownership in the United States of America.

16. On Nov. 8, 1984 Eleanor Simpson had emergency lung surgery. A tumor the size of a golf ball had developed in the right lung. Following the forceable entry by the Sheriff's Dept. Oct. 6, 1983 she had a clear chest x-ray at Lucerne Hospital.

17. The Simpson vs. Simpson dissolution was pattered after the Wescott vs. Wescott dissolution in 1982 during the McCarty vs. McCarty era in the military ... Two highly successful professionals in real estate careers have been destroyed by prejudicial judges in Orange County and fraudulent attorneys.

18. In my opinion Terry Young has been aiding and abetting crime in Orange County, Florida since 1981 and FORUM Shopped to get Judge Gridley on this bizarre atrocity case. I have the proof and evidence!!

19. For over 3 years Eleanor Simpson has been denied all her constitutional rights!!!

20. As Sylvia Porter writes Divorcees are left Pensionless! Eleanor Simpson has been left homeless, insuranceless, her inheritance taken away from her and the advesarial ex-husband, Donald M. Simpson and Terry Young had the only legal rights in this travesty of justice in Orange County, Florida. ABUSE OF PROCESS IS A DISGRACE TO THE LEGAL PROFESSION!!!!!

21. The final judgment order the homestead to be sold and the monies to be

divided!! Eleanor Simpson was making all mortgage payments and paid $1735.00 taxes for the year of 1983. Terry Young compared the fraudulent Sheriff's sale to a 1976 case law that was a mortgage foreclosure. 3207 Cullen Lake Shore Drive had an original mortgage of 6% with American Federal Savings & Loan Association now Coral Gables Fereral Savings & Loan Association yet they were not present for the sale on the Courthouse steps.

22. In the final judgment Judge Gridley DID NOT RETAIN JURISDICTION yet abused his discretionary power----every hearing of 2 1/2 years, Eleanor Simpson was denied every constitional right & civil rights....Due Process was used by Terry Young when Judge Cooper withdrew from the Simpson vs. Simpson dissolution. "His Client was

not Alloved Due Process"!

23. In my opinion, Terry Young, attorney and Donald M. Simpson frauded the U.S. Government on the Survivor Benefit Plan. As Terry Young so cleverly phrased it in his Ready, Willing & Able Letter---he would not jeipardize Mrs. Simpson's position with Army Finance by informing them that the Simpsons were divorced this saved Donald M. Simpson approximately $30.00 a month for the SBP cost more for the military to provide it for an ex-spouse than a wife!!! See transcript of hearing where Judge Gridley was finally informed that Donald M. Simpson refused to voluntarily assign the SBP.

24. Ben Thompson was supposed to hold Donald M. Simpson in contempt of court in March but Terry Young convinced him

that he could not sign the form from Army Finance because it was over at the Appellate Court!!!! Tactics continuously used by this fraudulent attorney who saw a cash register and knew from Dec. 1981 where Eleanor Simpson lifetime savings were being expended on a 27 yr. old drug addict married woman who is on 6 years probation. See Donna Jackson's criminal record!!!!

25. The diminuation of Eleanor Simpson lifetime estate & pension planning is a disgrace to the legal & judicial profession in the State of Florida!!!

26. New Marital Law in the State of Florida do not allow any judge to give away another person's gifts and inheritance---forceable entry was grand larceny!!!

27. Sale on the Court House Steps was a Set-Up by Terry Young & Tanya Plaut --- EXTORTION, FRAUD & PERJURY!!!

28. Check Court Transcript Set. 11, 1984 regarding Superseded Bond which was not held in trust by the Clerk of the Court for Eleanor Simpson but was an empty C.D. since Donald M. Simpson & Terry Young attorney with Giles, Hedrich & Robinson redeemed it in March 1983 without a court order & used part of the 422,000(plus) to pay Terry Young's fees again & to purchase Eleanor Simpson's 1/2 interest in her homestead of 22 years $170,000 to $200,000 equity (total) for less than $8,500...(with E.S.S. own monies)... Donald M. Simpson was set-up by Terry Young & Tanya Plaut. Check same transcript regarding SBP which was never sent into Army Finance until

Dec. 1984. Terry Young & D.M. Simpson frauded the U.S. gov't. by not informing them the Simpsons were divorded in Florida May 24, 1983. Army Finance was not informed by Donald M. Simpson until Jan 1985!!! See Terry Young's Ready Willing & Able letter written to Ben Thompson June 1983!!!

29. Donald M. Simpson's Financial Affidavit used at the May 3, 4, 5, 1983 trial awarded Donna Jackson (Indigent, married, 27 yr. drug addict with criminal record dating back to age 15 - prostitute on 6 yrs. probation (See Donna Jackson's rap sheet from Seminole County Court House -- $10,000 bail posted March 1982 with joint marital assets from the Simpson retirement & estate planning pensions) awarded by Judge Gridley $400 a month

of the joint marital assets that were divided by the final judgment; $735 Alimony to a wife of 42 years. All Martin retirement pension, U.S. Military retirement pension to Donald M. Simpson yet the Merrill-Lynch stocks & bonds which represented all of Eleanor Simpson's earnings in real estate commissions $350,000 total reinvested for over 22 years --- her special equity over and above what she had earned as a military wife in 42 years of marriage---24 in military service!!! In all out of court settlements she was willing to divide this to make her lifetime income equal to his See Snyder-Pension Planners equal division of all the marital assets---As a Pension planner he was never used as a Professional Witness nor were any IRS returns even

discussed or entered into the Sealed File. Reason: Terry Young was operating on a percentage basis so he didn't want my Special Equity proven!!!

Eleanor Simpson was used as a tax deduction & a military dependent and was never allowed an insurance annuity of her own---always told the stocks and bonds would were held as JTWROS. In the course of 3 years divorce litigation where an adversarial husband was allowed to write the final judgment in its entirety, prejudicial judge (See Excerpts from Tanya Plaut Brief to 5th District Court of Appeals) and in my opinion an opposing attorney was allowed to use fraud, extortion, concealment, conspiracy, black mail, perjury and lies for over three years. My divorce is a total

disgrace to the legal profession!! See my Travesty of Justice and the Sham of the Trial!! Aiding & Abetting Crime in Orange County!!!Judge Gridley quote "What rights does that woman have to control where that man spends her money--- That Money"!!! See Appelate Brief that went to the 5th District Court of Appeals to have Judge Gridley recuse himself from my divorce action. He was only concerned with the rights of a hostile spouse.

I certify that the comments and remarks in the foreoing pages are correct to the best of my knowledge and understanding.

/S/ ELEANOR S. SIMPSON

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO. 85-455-CIV-ORL

ELEANOR S. SIMPSON

Plaintiff,

vs.

DONALD M. SIMPSON, et al.

Defendant.

_____/

ANSWER AND AFFIRMATIVE DEFENSES
OF LAWSON LAMAR TO COUNT 1 OF THE
FIRST AMENDED COMPLAINT

Defendant, LAWSON LAMAR, as Sheriff of Orange County, Florida, files his Answer and Affirmative Defenses to Count 1 of the First Amended Complaint as follows:

1. Defendant, LAWSON LAMAR, admits that at all times material to the allegations of the Complaint he was the sheriff of Orange County, Florida

2. Defendant admits that Exhibit "D" attached to Plaintiff's First Amended

Complaint is a copy of Notice of Sheriff's Sale executed by Deputy Sheriff Trainum of the Orange County Sheriff's office.

3. Defendant admits that plaintiff was not present at 11:00 a.m. for the sale of that real property described in the Notice of sheriff's sale attached to plaintiff's First Amended Complaint as Exhibit "D".

4. Defendant admits that by a Sheriff's Deed dated May 2, 1984, Lawson L. Lamar, as Sheriff of Orange County, Florida did sell to Donald M. Simpson all of the right, title and interest of Eleanor Simpson in and to certain real property located in Orange County, Florida.

5. Defendant, LAWSON LAMAR, denies each and every remaining allegation of Count I of the First Amended Complaint

not specifically admitted above.

6. Defendant, LAWSON LAMAR, affirmatively alleges that this Court lacks jurisdiction of the subject matter of Plaintiff's claim as it fails to state a cause of action against Defendant, LAWSON LAMAR, which is cognizable under 42 U.S.C. Statute 1983 or any other statute which would provide this Court with jurisdiction.

7. To the extent that Count I of the First Amended Complaint seeks to hold LAWSON LAMAR vicariously liable to the Plaintiff for alleged violations of her civil rights committed by otheres, the claim against LAWSON LAMAR cannot stand. Vicarious liablilty is not a proper basis for recovery under the Civil Rights Act.

8. Defendant, LAWSON LAMAR, affirmatively alleges that he enjoys an absolute immunity from suit for some or

all of the actions alleged to have been committed by him in the First Amended Complaint.

9. Defendant, LAWSON LAMAR, affirmatively alleges that he enjoys a qualified immunity from suit for some or all of the actions alleged to have been committed by him in the First Amended Complaint.

I hereby certify that copy hereof was furnished to the following this 4th day of November, 1985, by U.S. Mail: James R. Lavigne, 541 S. Orlando Avenue, Suite 201, Florida National Bank Building, Maitland, Florida 32751; W.L. Kirk, Jr., P.O. Box 1873, Orlando, Florida 32802; William G. Osborne, 800 N. Highland Avenue, Suite 104, Orlando, Florida 32803; Duncan B. Dowling, III, P. O. Box 3427, Orlando, Florida 32802; Raymond Goodman, 112 S. Lake Avenue, Orlando,

Florida 32802; Wallace W. Tudhope, P. O. Box 6086-C, Orlando, Florida 32802.

/S/ JEFFREY G. SLATER
PITTS, EUBANKS, HANNAH, HILYARD & MARSEE, P.A.
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Attorneys for Defendant,
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(305) 425-4251

EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

90-1340

Supreme Court, U.S.
FILED
FEB 12 1991
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1990

SUPREME COURT CASE NO.

ELEANOR S. SIMPSON,
Petitioner

v.

DONALD M. SIMPSON, TERRY C. YOUNG,
GILES, HEDRICK & ROBINSON, P.A.;
TANYA PLAUT, LAWSON LAMAR, SHERIFF
OF ORANGE COUNTY, FLORIDA; AND
MINNIE BRIDGES
Respondents

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT COURT OF APPEAL

VOLUME 2

JAMES R. LAVIGNE, ESQUIRE
5401 S. Kirkman Road, Suite 750
Orlando, Florida 32819
(407) 363-4821
(407) 363-5167 (FAX)
Attorney for Petitioner

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

CASE NO. 85-455-CIV-ORL

ELEANOR S. SIMPSON

Plaintiff

vs.

DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., et al.

Defendants

_____/

ORDER

This matter is before the Court sua sponte. On June 27, 1985 this Court entered summary orders granting five motions to dismiss (docs. 10, 11, 12, 16, 18). On that same date, the Clerk of Courts closed the file assuming that such orders constituted a dismissal of the action filed. Thereafter, on July 17, 1985 the plaintiff filed a Notice of Appeal.

The Court's orders of June 27, 1985 did not specify that amendment of the complaint was precluded or that granting the motions constituted dismissal of the action. Although the plaintiff does not have a right to amend as a matter of course after dismissal of the complaint, Czeremcha v. International Association of Machinists and Aerospace Workers, AFL-CIO, 724, F.2d 1552, 1554 (11th Cir. 1984), the liberal mandate of Federal Rule of Civil Procedure 15 requires that leave to amend be "freely given when justice so requires." Fed. R. Civ. P. 15(a), cf Fed. R. Civ. P. 41(a)(2).

In accordance with Federal Rule of Procedure 60(a), the Clerk of the Courts is directed to reopen the case file. Plaintiff has twenty days within which to amend her complaint.

SO ORDERED at Orlando, Florida this 29 day of July, 1985.

/S/ G. KENDALL SHARP
United States District Judge

Copies to:

James R. Lavigne, Esq.
Jeffrey G. Slater, Esq.
Duncan B. Dowling, III, Esq.
William G. Osborne, Esq.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO. 85-455-CIV-ORL

ELEANOR SIMPSON,

Plaintiff,

vs.

DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., TANYA PLAUT, ROYCE PIPKINS and LAWSON LAMAR, Sheriff, Orange County, Florida,

Defendants.

ORDER

This is an action by an individual against a number of defendants for alleged wrongs arising out of plaintiff's divorce from her husband of over forty-two years. The wrongs alleged seem to fall into two categories. First, plaintiff alleges that during October of 1983 deputy sheriffs forcibly entered her home pusuant to a court order for the

purpose of carrying out a prior order dividing personal property of the husband and wife, and thereafter, without probable cause, arrested plaintiff for resisting arrest. The second alleged wrong relates to the judicial sale of plaintiff's interest inher home of twenty-two years resulting from a judgment obtained by a former attorney in the divorce on a claim for attorney's fees against plaintiff. Before the Court presently are five separate motions to dismiss the first amended complaint. Most of the motions raise common issues and, therefore, rather than discussing each motion separately, the Court will address the issues.

A. WHETHER THE FIRST COUNT IN THE COMPLAINT STATES A CAUSE OF ACTION UNDER 42 U.S.C. SECTION 1983

The standard in granting a motion to dismiss for failure to state a claim is

well known. "[A] motion to dismiss for failure to state a claim should not be granted unless it appears to a certainty that the plaintiff would not be entitled to recover under any state of vacts which could be proved in support of his claim." Cook & Nichol, Inc. v. Plimsoll Club, 451 F.2d 505, 506 (5th Cir. 1971); see also Quality Foods de Central America, S.A. v. Latin American Agribusiness Development Corporation, 711 F.2d 989, 998 (11th Cir. 1983). This standard will be applied to the allegations in the first count as summarized here.

The allegations indicate that plaintiff Eleanor Simpson was involved in a state court divorce proceeding against her husband, defendant Donald Simpson. She was represented by defendant Tanya Plaut. During the pendency of the divorce proceeding, defendant Plaut filed

a motion to withdraw from representing the plaintiff to which plaintiff objected. The Court granted defendant Plaut's motion to withdraw.

The final judgment in the divorce included a provision that the parties shall each be awarded an equal interest in the marital home. The final judgment was dated may 24, 1983. Before that, on April 29, 1983, defendant Plaut sued plaintiff in state court for attorney's fees. Defendant Plaut was awarded judgment in the amount of $8,013.87 on January 19, 1984. On March 26, 1984, defendant Plaut caused a notice of sheriff's levy to be filed upon plaintiff's interest in the marital home, and the sheriff issued a notice of sheriff's sale advertising the sale of the property for April 30, 1984, "between the legal house of eleven o'clock in the

forenoon and two o'clock in the afternoon on said day."

The sale took place at 11:00 a.m. and the plaintiff's property was sold to the defendant husband Donald Simpson for the sum of $8,410.00. The plaintiff's interest in the house was worth over $75,000.00. The plaintiff appeared at the courthouse prior to 12:00 noon and offered to redeem her interest by tendering the amount for which the property was sold. The plaintiff was not allowed to redeem her interest.

During the pendency of the divorce proceeding, and also after the entry of judgment in the divorce, plaintiff had made public accusations against the trial judge, William C. Gridley, that the judge was biased against her and that he was not conducting a fair proceeding. she filed written complaints and participated

in circulating public petitions calling for the investigation of Judge Gridley.

Based on these facts, plaintiff alleges that her husband (defendant Simpson), her former attorney (defendant Plaut), the sheriff (defendant Lamar), and Defendants Terry C. Young, and the law firm of Giles, Hedrick & Robinson, P.A. (whose connection with the events described is not explained at all in the first count, although it is later alleged that they are the husband's attorneys), conspired to deprive plaintiff of her constitutional rights. The specific deprivations are not clearly pled, but it can be inferred that the deprivations alleged are (1) that the defendants conspired, along with the trial judge in the divorce proceeding and other circuit judges, to intentionally deprive plaintiff of her interest in her home for

the purpose of punishing plaintiff for having complained of perceived unfair treatment by the trail judge in the divorce proceeding, (2) that the plaintiff was denied her right to equal protection in that the law in effect at the time of the sale prohibited the sale of homestead property belonging to married or single persons who were the head of the household with two or more persons, but did not extend similar protection to single women without a household of two or more persons, and (3) plaintiff was denied a "United States constitutionally required opportunity to redeem her property prior to issuance of a deed by the sheriff."

In assessing the viability of this claim, "the initial inquiry must focus on whether the two essential elements to a Section 1983 action are present: (1)

whether the conduct complained of was committed by a person acting under color of state law; and (2) whether this conduct deprived that person of rights, privileges, or immunities secured by the constitution or laws of the United States." Paarratt v. Taylor, 451 U.S. 527, 534 (1981).

1. Whether the Allegations that Defendants Acted Under Color of State Law are Sufficient

With regard to the first question, the defendants fall into two categories. Defendant Lamar is a county sheriff and his actions are unquestionable taken under color of state law. The reamining defendants in the first count, Simpson, Plaut, Young and Giles, hedrick & Robinson, P.A., are private persons, whose actions normally would not constitute state action, or held to be taken under color of state law. However,

plaintiff has alleged that the defendants "did conspire and operate together with the Circuit Court Judges under color of Florida law to defeat the plaintiff of her homestead property by conspiring, aiding and abetting each other in an effort to deprive her of her homestead property without due process of law...." Complaint, paragraph 12.

It is not well established that a private person who conspires with a judge is a state actor for purposes of section 1983. Dennis v. Sparks, 449, U.S. 24 (1980). As stated by the Eleventh Circuit "[t]he 'color of state law' component of Section 1983 may be satisfied by showing that an official act of a defendant judge was the product of a corrupt conspiracy involving the judge and other private parties." Dykes v. housman, 743 F.2d 1488 (11th Cir. 1984)

rehearing en banc granted 743 F.2d 1505 (11th Cir. 1984). "Even if the judge himself is held to be absolutely immune from suit ... the private parties who conspire with the judge act under color of state law for Section 1983 purposes." Id.

The question then is whether plaintiff has made allegations sufficient to bring herself within the holdings of Dennis v. Sparks and Dykes v. Houseman. Guidance in answering that question is provided by Phyllips v. Mashburn, 746 F.2d 782 (11th Cir. 1984), which affirmed the dismissal of a pro se prisoner's conplaint alleging a conspiracy, between a state court judge adn the attorneys who represented him during his criminal prosecution, to deprive him of his right to sue the attorneys for legal malpractice. The complaint made no particularized showing

that a comspiracy existed between the defendant lawyers and the judge. Therefore, the complaint was not sufficient. "The naked assertion of a conspiracy between a state judge and private defendants without supporting operative facts provides an insufficient state action nexus for a section 1983 action." Id. at 785. Accord Fullman v. Graddick, 738 F.2d 553 (11th cir. 1984).

The Phillips court relied on Sooner Products Co. v. McBride, 708 F.2d 510 (10th Cir. 1983), a case in which the Court of Appeals affirmed the dismissal of a claim similar to the one in the instant case. The Tenth Circuit stated:

> When a plaintiff in a Section 1983 action attempts to assert the necessary "state action" by implicating state officials or judges in a conspiracy with private defendants, mere conclusory allegations with no supporting factual averments are insufficient; the pleadings must specifically present facts tending to show agreement and concerted action ... The standard is

> even stricter where the state officials allegedly involved in the conspiracy are immune from suit, as are the state court judges here.

Id. at 512.

In the present case, the amended complaint is absolutely devoid of facts tending to show agreement and concerted action with the judges named in the complaint. There are no operative facts - merely a naked assertion that a conspiracy existed. Moreover, there are no facts pled which could lead to an interference that the private defendants were in a conspiracy with the sheriff or the judges. Thus, Count I as to the private defendants Donald M. Simpson, Terry C. Young, giles, Hedrick & Robinson, P.A., and Tanya Plaut will be dismissed. Plaintiff will be granted leave to amend in order to give her the opportunity to meet the pleading requirements set forth above.

2. Whether the Allegations that Defendant Lamar's Conduct Deprived Plaintiff of Rights, Privileges, or Immunities Secured by the Constitution or Laws of the United States are Sufficient

Plaintiff alleges that she was treated unfairly with regard to the disposition of her home and that this unfair treatment was motivated by a desire to punish or retaliate aginst her for speaking out to complain about the proceedings in her divorce. This allegation must be evaluated under the liberal federal pleading standare taht requires denial of the motion to dismiss unless it appears to a certainty that the plaintiff would not be entitled to recover when any set of facts which could be proven in support of her claim. Cook & Nichol, Inc. v. Plimsoll Club, 451 F.2d 505, 506 (5th Cir. 1971).

In Wilson v. Thompson, 592 F.2d 1375 (5th cir. 1979), the Court of Appeals

recognized that state action taken in retaliation against an individual's exercise of constitutionally protected rights gives rise to a cause of action under 42 U.S.C. Section 1983. See also Mt. Healthy City Board of Education v. Doyle, 429 U.S. 274 (1977); of. Barnett v. Housing Authority of City of Atlanta, 707 F.2d 1571, 1577 (11th Cir. 1983) (Deprivation of property interest for improper motive is violation of substantive due process.) Thus, in the present case, if the plaintiff can prove that in fact she was treated unfairly and that the unfair treatment was taken as punishment for the exercise of her right to complain about the performance of the judge in her divorce, she will have made out a prima facie case of a violation of her constitutional rights. Thus, as to this allegation, defendant Lamar's motion

will be denied.

In addition, Plaintiff's first claim states, in paragraph 13, that plaintiff was discriminated against in that "the law in effect at the time of the forced sale of the plaintiff's homestead, disallowed the forced sale of homestead of married or single persons who were the head of household with 2 or more persons but not for single women who were heads of their own households...." In the prayer for relief, plaintiff asks for a declaratory judgment that Florida Constitution, Article X., Section 4, as applied prior to November 6, 1984, applies equally to all natural persons. Evidently then plaintiff is attacking the constitutionality of Article X, Section 4 of the Florida Constitution, which provides for a homestead exemption from forced sale for debts.

The constitutional provision, before its amendment in November of 1984, applied only to property "owned by the head of a family." After its amendment, it applies to property "owned by a natural person." Plaintiff seems to be alleging that the former grant, only to heads of families, was unconstitutinally discriminatory. If the provisions discriminated on the basis of gender onits fact plaintiff would, of course, have stated a claim. E.g. Califano v. Goldfarb, 430 U.S. 199 (1977). The provision does not so discriminate, and to the extent that plaintiff has attempted to state an independent claim for denial of equal protection she has failed to do so. Should plaintiff attempt to assert such a claim in another amended complaint, it is suggested that the claim be stated in a separate count,

Rule 10(b), Fed.R.Civ.P., and that the nautre of the equal protection violation be alleged clearly.

Finally, with regard to Count I, plaintiff alleges in paragraph 13 a denial of her "constitutionally required opportunity to redeem her property prior to the issuance of a deed by the sheriff." This allegation does not state an independent basis for relief. Plaintiff has not cited, nor had the Court located, any authroity in support of such a claim. In order to eliminate from the present amended complaint, the claims of equal protection and denial of right to redeem, the Court will order that paragraph 13 of the complaint be stricken.

B. WHETHER THE SHERIFF IS PROTECTED FROM LIABILITY UNDER MONELL V. DEPARTMENT OF SOCIAL SERVICES, 436 u.s. 658 (1978)

In Monell the Supreme Court held that municipalities were "person" within the meaning of section 1983 and thus were not immune from suit under that section. The Court also held however that a local government cannot be held liable under section 1983 on a respondeat superior theory. 436 U.S. at 691-695.

In the present case, as far as can be gleaned, plaintiff has sued defendant Sheriff Lamar as an individual, rather than in his official capacity. A suit against the sheriff in his official capacity would be tantamount to a suit against the county, and Monell would therefore apply. However, that is not the situation here, and Monell does not apply.

Nonetheless, it is true that recovery against the sheriff, even sued as an individual, cannot be had on the basis of

vicarious liablity for the unlawful actions of his deputies. Baskin v. Parker, 602 F.2d 1205 (5th cir. 1979). In the present case the plaintiff is not seeking relief on the basis of vicarious liablilty or respondeat superior. He has alleged a personal involvement by the sheriff. If plaintiff can prove a deprivation of constitutional rights and a personal involvement by the sheriff causing those constitutional violations, she can make out a prima facie case against the sheriff. Wagner v. Bonner, 621 F.2d 675 (5th cir. 1980).

C. WHETHER THE SHERIFF IS UNSULATED FROM LIABILITY BY OPERATION OF A STATE STATUTE

The sheriff, in his motion to dismiss, argues that he "is insulated from liability for having handled the forced sale of plaintiff's marital home under Section 30.30 Fla. Stat." That statute provides in part that "[n]o sheriff shall

be liable in damages to anyone whomsoever for making a wrongful levy whenevey the same has been made as required under subsection (1)."

By virtue of the Supremacy Clause of Article VI of the Constitution, the statutory immunity must give way to congressional intent to provide a remedy for violation of the constitution and laws of the United states. Questions of immunity under section 1983 are federal questions that are answered with reference to the intent of Congress. See e.g. Dennis v. Sparks, 449 U.S. 24 (1980). Obviously, it was not the intent of Congress in passing the reconstruction era civil rights acts to allow states to immunize their officers from suit in federal court for alleged violations of constitutional rights.

D. WHETHER THE COURT HAS PENDANT JURISDICTION OVER THE STATE LAW CLAIMS

Plaintiff has pled six state law claims against various of the defendants for which she requests the court to take pendant jurisdiction. The doctrine of pendant jurisdiction holds that federal courts have the power to hear a state claim along with a substantial federal claim if the relationship between the federal claim and the state claim permits the conclusion that th eentire action constitutes but one constitutional case. United Mine Workers v. Gibbs, 353 U.S. 715 (1966). "The state and federal claims must derive from a common nucleus of operative fact." Id. at 725. Even where pendant jurisdiction exists, a court may still exercise its discretion against hearing the state claim. Id.

In the present case, the fourth, the fifth, the sixth and seventh counts are related to occurrences separate from the

one upon which the first count, the only federal claim, is based. Thus, those state claims do not derive from a common nucleus of operative fact as the federal claim and pendant jurisdiction does not exist. Moreover, regarding the fifth claim, against defendant Pipkins, relief is requested against a party not named in the federal claim. See Aldinger v. Howard, 427 U.S. 1 (1976); Williams v. Bennett, 689 F.2d 1370, 1379 (11th Cir. 1982) cert.denied 104 S. Ct. 335 (1983). Accordingly, the fourth through seventh counts will be dismissed. the dismissals (except against defendant Pipkins) will be with leave to amend because some of the claims make reference to federally protected rights and there may be some possibility of pleading one or more federal claims. The claim against defendant Pipkins is identical to the

claim in the original complaint which was once dismissed. Therefore, for that claim, the dismissal will be without leave to amend.

The second claim in the amended complaint is against plaintiff's former husband, defendant Simpson. the claim does derive from the same occurrence as the federal claim, the forced sale of plaintiff's interest in her home. However, since the first claim was dismissed against defendant Simpson the second claim will be dismissed as well, with leave to amend. Now the Court exercises its discretion to hear the second count as a pendant matter will depend upon plaintiff's ability, if she chooses to amend, to state a viable federal claim against defendant Simpson.

The third count is similar. It relates to the civil action that resulted

in the sale of plaintiff's home. The Court's willingness to hear this claim under the doctrine of pendant jurisdiction will depend on whether or not the first count, the civil rights conspiracy claim, can be repled to state a claim.

E. WHETHER THIS ACTION IS BARRED BY THE DOCTRINE OF COLLATERAL ESTOPPEL

In the circuit court civil action that resulted in the sale of plaintiff's home, Plaut v. Simpson, No. CI 83-4444, plaintiff filed a motion to vacate sheriff's sale that was decided against her. The claimed deficiencies with regard to the sale that are raised in the present case arguable were, or at least could have been, raised in that motion. In addition, that portion of plaintiff's case that claims that defendant Plaut had no right to pursue the fee claim in the first place could have been raised by way

of defense or counterclaim prior to the judgment. Thus, a question arises as to whether plaintiff should be estopped from bringing some of the present claims.

Florida requires mutuality of parties as a prerequisite to asserting the doctrine of collateral estoppel. Trucking Employees of North Jersey Welfare Fund, Inc. v. Romano, 450 So. 2d 843, 845 (Fla. 1984). Thus, only defendant Plaut, as the sole defendant who was a party to the state court proceeding, can raise the defense of estoppel.

If it not necessary to determine at this time whether plaintiff is estopped on some or all of her claims under the Florida criteria for applying collateral estoppel , see Mobil Oil Corporation v. Shevin, 354 So.2d 372 (Fla. 1977), because the claims against defendant

Plaut are being otherwise dismissed. If plaintiff chooses to amend and is successful in stating a claim against defendant Plaut the collateral estoppel and compulsory counterclaim issues may have to be addressed at that time.

F. CONCLUSION

The Court has considered the following motions: (1) defendant Lawson Lamar's motion to dismiss first amended complaint, 2) defendant Plaut's motion to dismiss, 3) defendant Pipkin's motion to dismiss first amended complaint, 4) defendant Donald M. Simpson's motion to dismiss first amended complaint, and 5) motion to dismiss filed by defendants Young and Giles, Hedrick & Robinson, P.A. (document no. 37).

It is noted that document no. 36 (another motion to dismiss on behalf of defendants Young and Giles, Hedrick &

Robinson, P.A.) has been withdrawn through the filing of the document entitled Response to Motion to Strike and Memorandum in Support thereof (document no. 46). Thus, plaintiff's motion to strike filed on September 17, 1985, (document no. 41) is moot.

Upon consideration of the motions, it is

ORDERED that

1. Defendant Lawson Lamar's motion to dismiss first amended complaint is GRANTED IN PART and DENIED IN PART. The motion is DENIED as to the first count except for paragraph 13. The motion is GRANTED as to the fourth count, the only other claim against defendant Lamar.

2. Paragraph 13 of the amended complaint is hereby STRICKEN.

3. The fourth count of the amended complaint against defendant Lamar is

DISMISSED and plaintiff is GRANTED leave to amend within twenty (2) days from the date of this order.

4. Defendant Pipkins' motion to dismiss first amended complaint is GRANTED.

5. The amended complaint against defendant Pipkins is hereby DISMISSED WITHOUT LEAVE TO AMEND.

6. The motions to dismiss of defendant Plaut, defendant Simpson, and defendants Young and Giles, Hedrick & Robinson, P.A. are GRANTED.

7. The amended complaint against defendant Plaut, defendant Simpson and defendants Young and Giles, Hedrick & Robinson, P.A., is hereby DISMISSED and plaintiff is GRANTED LEAVE TO AMEND within twenty (20) days from the date of this Order.

8. Plaintiff's motion to strike is MOOT.

SO ORDERED in Chambers at Orlando, Florida this 25 day of October, 1985.

/S/ G. KENDALL SHARP
United States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORALANDO DIVISION

CASE NO. 85-455-CIV-ORL-19

ELEANOR S. SIMPSON,

Plaintiff,

v.

DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICK & ROBINSON, P.A., MINNIE BRIDGES, and LAWSON LAMAR, as Sheriff Orange County, Florida,

Defendants.

_____/

ORDER

This matter was considered by the Court on the following motions:

1. Motion to Dismiss Third Amended Complaint by Defendants Terry Young and Giles, Hedrick and Robinson, P.A., or in the Alternative, Motion to Strike Portions Thereof with Supporting Memorandum of Law (Doc. Nos. 110 and 111, filed December 5, 1986) and Memorandum in

Opposition (Doc. No. 117, filed December 18, 1986), Renewed Motion to Dismiss Third Amended Complaint or in the Alternative, Motion to Strike Portions Thereof by Defendants Terry C. Young and Giles, Hedrick and Roboinson (Doc. No. 142, filed March 14, 1988), Response of Plaintiff with Memorandum of Law (Doc. Nos. 145 and 146, filed May 2, 1988), Motion for Summary Judgment by Defendants Terry C. Young and Giles, Hedrick & Robinson (Doc. No. 153, filed March 31, 1989) and Memorandum in Support of their Motion for Summary Judgment (Doc. No. 162, filed April 24, 1989) and Memorandum of Law filed by Plaintiff in Opposition to Defendants, Donald M. Simpson's and Terry C. Young and Giles, Hedrick & Robinson's Motions for Summary Judgment (Doc. No. 182, filed June 16, 1989).

2. Motion to Dismiss Third Amended Complaint with Prejudice by Defendant Donald M. Simpson with Supporting Memorandum of Law (Doc. Nos. 112 and 113, filed December 8, 1986), Motion of Defendant Donald M. Simpson for Summary Judgment and Memorandum in Support thereof (Doc. Nos. 165 and 166 filed April 28, 1989), and Memorandum of Law filed by Plaintiff Eleanor S. Simpson in Opposition to Defendants, Donald M. Simpson's and Terry C. Young and Giles Hedrick & Robinson's Motions for Summary Judgment (Doc. No. 182, filed June 16, 1989).

3. Motion for Entry of Judgment Upon Order of Dismissal as to Defendant Tanya Plaut by Plaintiff and Memorandum of Law in Support of Plaintiff's Motion for Entry of Judgment (Doc. Nos. 128 and 128, filed March 2, 1987) and Motion of

Plaintiff to Reconsider its Order granting Defendant Tanys Plaut's Motion to Dismiss Plaintiff's Third Amended Complaint (Doc. No. 115, filed December 18, 1986).

4. Motion to Dismiss Third Amended Complaint by Defendant Minnie Bridges with Supporting Memorandum of Law (Doc. Nos. 119 and 120, filed December 19, 1986) and Memorandum in Opposition (Doc. No. 123, filed January 16, 1987), Motion for Summary Judgment on behalf of Minnie Bridges d/b/a Minnie Bridges Realty with Memorandum in Support (Doc. No. 156, filed April 3, 1989) and Memorandum of Law filed by Plaintiff in Opposition to Defendant, Minnie Bridges' Motion for Summary Judgment (Doc. No. 184, filed June 19, 1989.

5. Notice of Filing Affidavit of Plaintiff (Doc. No. 177, filed May 25,

1989).

6. Motion to Dismiss Third Amended complaint by Defendant Lawson Lamar with Supporting Memorandum (Doc. No. 114, filed December 8, 1986) and Memorandum in Opposition (Doc. No. 116, filed December 18, 1986), Motion to Defendant Lawson Lamar for Summary Judgment (Doc. No. 168, filed May 1, 1989) and Memorandum of Law in Opposition to Motion of Defendant Lawson Lamar for Summary Judgment (Doc. No. 181, filed June 16, 1989).

I

DISMISSAL OF CLAIMS AGAINST TANYA PLAUT WITH PREJUDICE

The Motion of Defendant Tanya Plaut to Dismiss Third Amended Complaint having been granted by Judge Sharp (Doc. No. 106, filed December 2, 1986), Plaintiff's Motion for Entry of Judgment Upon Order of Dismissal (Doc. No. 128) is GRANTED. The Motion to Reconsider filed by

Plaintiff (Doc. No. 115) is DENIED.

II

CLAIMS MADE PURSUANT TO 42 U.S.C. SECTION 1983

The essential facts upon which the Plaintiff predicates her Third Amended Complaint have been recited in a previous Order of the Court (Doc. No. 47, filed October 28, 1985). In order to state a claim in federal court under 42 United States Code Section 1983, as asserted in Counts I, II, IV, and V 1 Plaintiff must allege that Defendants conspired together (1) under color of state law, (2) to deprive Plaintiff of a federally protected right. 42 U.S.C. Section 1983.

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1 It is unclear whether Plaintiff is asserting in Counts IV and V a violation of 42 U.S.C. Section 1983 or 42 U.S.C. Section 1985(3). In an abundance of caution, therefore, this court will consider the allegations therein under both statutes. See infra, at pages 15-18 for a discussion of these claims under 42 U.S.C. Section 1985(3).

See also Lugar v. Edmundson Oil Co., 457 U.S. 922 (1982); Blum v. Yaretsky, 457 U.S. 991 (1982).

The "under color of state law" factor requires Plaintiff to demonstrate either that there was a state actor or that the Defendants who are private individuals conspired with a state actor. See Dennis v. Sparks, 449 U.S. 24, 27-29 (1980). The only state actor who is a Defendant in this action is Lawson Lamar who was at the time of the events alleged a county sheriff. As to the other Defendants, Plaintiff alleges (1) that they conspired with Defendant Lamar and various judges who were involved in both the divorce proceeding and the events leading to the sheriff's sale of Plaintiff's one half interest in her home of 22 years and/or (2) that the use of Florida's laws on sheriff's sales provides a sufficient

nexus with the state to satisfy the state action requirement under 42 U.S.C. Section 1983.

A. Conspiracy with State Judges

Taking the allegations involving the judges first, the "color of state law" requirement may be satisfied by demonstrating that an official act of a judge was the result of a conspiracy between the judge and private actors. This is true even though the judge may be immune from liability for official acts. Dennis Sparks, 449 U.S. 26 (1980); Phillips v. Mashburn, 746 F.2d 782, 785 (11th Cir. 1984).

In this case, all of Plaintiff's allegations which rely on the status of a judge to satisfy the "under color of state law" requirement depend solely on conclusory statements that there was a conspiracy. The law in the Eleventh

Circuit is that "[t]he naked assertion of a conspiracy between a state judge and private defendants without supporting operative facts provides an insufficient state action nexus for a section 1983 action." Phillips v. Mashburn, 746 F.2d 782, 785 (11th Cir. 1984). 2

This complaint is essentially a complaint about the decisions of state court judges under the guise of a Section 1983 action. Federal courts, however,

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2 The Eleventh Circuit also quoted with approval Sooner Products Co. v. McBride, 708 F.2d 510, 512 (10th Cir. 1983) in which the Tenth Circuit said:

> When a Plaintiff in a Section 1983 action attempts to assert the necessary "state action" by implicating state officials or judges in a conspiracy with private defendants, mere conclusory allegations with no supporting factual averments are insufficient; the pleadings must specifically present facts tending to show agreement and concerted action... The standare is even stricter where the state officials allegedly involved in the conspiracy are immune from suit, as are the state court judges here.

are not a forum for appealing state court decisions. Staley v. Ledbetter, 837 F.2d 1016, 1018 (11th Cir. 1988) (affirming dismissal for lack of subject matter jurisdiction when Plaintiff sought to reverse a state court's child custody determination); Collins v. Collins, 597 F. Supp. 33 (N.D. Ga. 1984); O'Connor v. O'Connor, 315 F.2d 420 (5th Cir. 1963).

Plaintiff contends that she has tried to obtain a remedy from the state courts but has been unsuccessful in obtaining the relief requested because of misrepresentations made by Defendants before the courts. Accepting this allegation as true, Plaintiff's complaint becomes one of misuse or abuse of legal process which is not a basis for a claim under 42 U.S.C. Section 1983. See e.g., McDougald v. Jenson, 786 F.2d 1465, 1488-89 (11th Cir. 1986) (explaining that it

is the general rule in this Circuit that a private individual does not act under color of state law by engaging in litigation, even in bad faith, unless that individual is compelled by state law to bring suit or is acting under the authority or pretense of authority of the state), cert denied, 479 U.S. 860 (1986); Collins v. Walden, 613 F.Supp. 1306 N.D. ga. 1985), aff'd without opinion, 784 F.2d 961 (11th Cir. 1986); Dalhberg v. Becker, 581 F. Supp. 855, 861-63 (N.D. N.Y.) (noting that challenge of misuse or abuse of state procedures does not supply "under color of state law" nexus), aff'd), 748 F.2d 85 (2d Cir. 1984), cert. denied, 470 U.S. 1084 (1985).

The Third Amended Complaint therefore is devoid of allegations of fact showing an agreement and concerted action among the Defendants and the judges named in

the Complaint. There are simply no operative facts, merely a naked assertion by the Plaintiff in her pleading, that a conspiracy existed. As such Plaintiff's Third Amended Complaint fails to state a claim of conspiracy in violation of 42 U.S.C. Section 1983 with state court judges. 3

Defendants' Motions for Summary Judgment also indicate that Plaintiff's allegations of a conspiracy with state court judges are unsupported by any evidence. Additionally, Plaintiff's Affidavit presents no evidence in support of this claim. (Doc. No. 177, filed May 25, 1989). Plaintiff asserted in her deposition that she knows that there is a conspiracy against her because all the

3 See also Dewey v. University of New Hampshire, 694 F. 2d 1, 3 (1st Cir. 1982), cert. denied, 461 U.S. 944 (1983).

judges ruled against her, and Judge Gridley used a proposed order prepared by counsel for her former husband instead of her proposed order. 4

Plaintiff has had sufficient opportunity to gather evidentiary support for her claims. This action was commenced in April of 1985. Discovery has been extended either by request of the Plaintiff or by joint motion of the parties on numerous occasions. 5 Further, Defendants attempted unsuccessfully to stay Plaintiff's depositions and to limit the scope of the

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4 Plaintiff also stated in her deposition that she would not be complaining at this time if the judge had used her proposed order. Therefore, the essence of Plaintiff's complaint is that the judges' decisions did not favor her.

5 See Doc. Nos. 77, 85, 92, 99, and 150.

depositions.

This court finds that, as required under Rule 56 of the Federal Rules of Civil Procedure, Defendants have carried their burden of demonstrating that there are not genuing issues of material fact that necessitate a trial, and Plaintiff has failed to offer any proof of a conspiracy involving a judge. Having failed to prove an essential element of her case, summary judgment is appropriate on Plaintiff's claim of a conspiracy involving state judges in violation of 42 U.S. C. Section 1983. See Celotex Corp. v. Cartrett, 477 U.S. 317 (1986) (noting that summary judgment is appropriate when the opposing party does not make a sufficient showing on an essential element of her case with respect to which she has the burden of proof). See also Matsushita v. Zenith Radio Corp., 475

U.S. 574 (1986) (explaining that "[w]hen the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts"); Adickes v. S.H. Kress & Co., 398 U.S. 144, 161-63 (1970).

B. Conspiracy with County Sheriff

In addition to allegations of a conspiracy involving state court judges, Plaintiff alleges that various Defendants conspired with Sheriff Lawson Lamar to deprive her of a federally protected right. 6 In Counts I, II, IV and V

6 In Count One Defendant Lamar is not named as a party, but Defendants Simpson, Young, and GHR are alleged to have caused a deputy sheriff to (1) seize Plaintiff's property (Complaint paragraph 14), (2) use excessive force during Plaintiff's arrest (Complaint paragraph 16 and 17), (3) imprison Plaintiff falsely (Complaint paragraph 19), and (4) arrest Plaintiff without a warrant which was the result of Defendant Lamar's insufficient policies and failure to properly instruct his

Plaintiff alleges that Defendants Donald M. Simpson ("Simpson"), Terry C. Young ("Young"), Giles, Hedrick & Robinson,

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deputy sheriff (complaint paragraph 22). Plaintiff's assertion that Defendants Simpson, Young, and GHR wrongfully caused these actions of the sheriff's office is unsupported by evidence. The allegations concern actions occurring during the forcible entry of the house which the sheriff's office undertook pursuant to state court order. This same court order also gave the sheriff's office the authority to arrest anyone who resisted the entry. Plaintiff admits that she objected to the seizure of some of the items. Complaint paragraph 16; Affidavit paragraph 14. Moreover, the order permitting the forcible entry was the result of Plaintiff's refusal to comply with a prior state court order which divided the marital property. These alleged wrongs are based on decisions of state court judges and are not properly revieved by this court within the context of a section 1983 action. As to the allegations concerning excessive force, see infra at , pages 13-14.

P.A. ("GHR"), Plaut, 7 and Bridges conspired with the sheriff ("Lamar") to cause deprivations of various constitutional rights. Assuming for purposes of the motions under consideration that Plaintiff has stated a claim for conspiracy pursuant to 42 United States Code Section 1983 because of the allegations of wrong doing by Lamar, Simpson, Young, GHR, and Bridges, the unrefuted facts presented on Motions for Summary Judgment reflect that Plaintiff cannot support the allegations she has made.

First, as to Defendant Young and GHR conspired with the sheriff's deputies to deprive her of rights secured by 42

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7 As a result of this Court's denial of Plaintiff's Motion to Reconsider the dismissal of Plaut from the Third Amended Complaint, this court need not reach the allegations concerning such Defendant.

United States Code Section 1983.

Plaintiff's affidavit relies upon a repetiton of the conclusory allegations made in the Third Amended Complaint 8 On

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8 Plaintiff defends against the Motions for Summary Judgment by asserting that :

Plaintiff has offered circumstantial evidence of Defendants' conspiracy to deprive Mrs. Simpson of her rights. A constitutionally infirm sheriff's sale of Mrs. Simpson's home took place April 30, 1984. The creditor, Tanya Plaut, held a lien of $8,013.87, attaching it to Mrs. Simpson's one-half interest in a $200,000.00 residence. The sole bidder was Defendant, Donald M. Simpson. He was represented at the sale by counsel, Defendants, Terry C. Young and Giles, Hedrick & Robinson. Defendant, Donald M. Simpson, obtained Mrs. Simpson's half interest for a bid of $8,013.87. Defendants, immeidately following the sheriff's sale, sold the residence through realtor Defendant, Minnie Bridges, one day after its listing and over $60,000.00 below its market value. Minnie Bridges was refereed to Donald Simpson by Terry Young. Deposition of Donald M. Simpson, May 1, 1986, p. 10.

Plaintiff's Memorandum of Law in Opposition to the Motions of Defendants Donald M. Simpson, Terry C. Young, and Giles, Hedrick & Robinson for Summary Judgment (Doc. No. 182, filed June 16, 1989, at pp.

the other hand, there is clear and unambiguous testimony from Defendant Young, the only attorney of GHR who was involved in any of the events about which Plaintiff complains, that he did not conspire with any member of the sheriff's department. Plaintiff has not made a sufficient showing to establish the existence of an essential element of her case, and therefore, the Motion of Young and GHR for Summary Judgment as to Counts I, II, IV and V of the Third Amended Complaint is GRANTED.

This court finds that the allegations involving Defendant Bridges are without merit. The unrefuted facts of record reflect that Defendant Bridges, a real

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25-25). Accepting these statements as true, these statements do not establish a conspiracy and are not sufficient to withstand the Defendants; Motions for Summary Judgment

estate broker, sold a house for Defendant Simpson. There is no evidence that Defendant Bridges praticipated in a conspiracy.

Similarly there is no evidence that Defendant Lamar participated in a conspiracy with the other Defendants to deny Plaintiff her civil rights in violation of 42 U.S.C. Section 1983. Therefore, the Motion of Lawson Lamar for Summary Judgment on this issue as asserted in Counts II, IV and V of the Third Amended Complaint is GRANTED.

Plaintiff also sues Defendant Lamar in Counts II, IV and V claiming, inter alia, that he acted under color of state law when he authorized an unconstitutionally infirm judicial sale. 9 Plaintiff first

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9 As noted earlier, Defendant Lamar is not made a defendant in Count I of the Third Amended Complaint.

complains that the homescead act is unconstitutional 10 second that the notice given to Plaintiff was inadequate, and lastly that the price which was ultimately obtained for her interest in the home resulted in a defective judicial sale because "where such inadequacy is connected with or shown to result from any mistake, accident, surprise, misconduct, fraud, or irregularity, the judicial sale is defective." Plaintiff's Memorandum of Law in Opposition to Defendant Lawsom Lamar's Motion for Summary Judgment (Doc. No. 181, filed June 16, 1989, at p. 7 (citation omitted). Plaintiff contends that "inadequate notice connected with a mistake or fraud on part of any

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10 See infra at page 17-18 for a discussion of the constitutionality of Florida's homestead act.

participating parties results in a defective sale." Id. at 7-8.

This court finds that there is no genuine issue of material fact as to the notice of the sale and that the notice published was not inadequate. The notice published in the newspaper announced that the sale would take place between the hours of 11:00 a.m. and 2:00 p.m. on a particular day. In fact, Plaintiff had been active, albeit unsuccessful, in attempting to stop the sale of her one half interest in the realty. 11 Plaintiff attended the sale, arriving after 11:00 a.m. and after the time the

11 Plaintiff also complains about a hearing which Plaintiff initiated prior to the sale in which she was unsuccessful in blocking the sale of the property because of the "animosity to Plaintiff due to Plaintiff's complaints of unfair treatment by other judges." Complaint 41 L.

realty was sold but prior to 2:00 p.m. Further, there are no facts to support Plaintiff's contention that thee was mistake, fraud, misconduct or other irregularity in such sale. 12 As a result of this Court's findings that there was no defective notice and sale, this court GRANTS Defendant Lamar's

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12 To the extend that Plaintiff may be asserting that the actions of Defendants under the state laws provide the requisite nexus with state activity to qualify under the "color of state law" requirement under Lugar v. edmonson Oil Co., 457 U.S. 922 (1982) and Fuller v. Hurley, 559 F. Supp. 313 (W.d. Va. 1983), the facts in this case are dramatically differenct from those presented in Lugar and Fuller where prejudgment attachments were attacked in section 1983 actions. In this case, the actions were all taken pursuant to state court order after notice was given and hearings were held. The state appellate process rather than the federal court is therefore the appropriate vehicle to attack both the proceedings and the actions which were taken as a result of the proceedings.

Motion for Summary Judgment on this issue as it is alleged in Counts II, IV and V.

Finally, in Counts IV and Count V Plaintiff incorporates by reference Count I which includes the allegation the a deputy sheriff used excessive force in arresting Plaintiff during the forcible entry of Plaintiff's house. Plaintiff states in her affidavit that during her arrest she was assaulted and physically injured by the deputy sheriff's use of excessive force which bruised her, caused her to faint, and also caused other unspecified injuries. Affidavit, paragraph 14. Defendant Simpson asserts in his deposition that he saw the members of the Orange County Sheriff's Office use very little or no force and that he saw no physical contact other than the deputy sheriff taking Plaintiff by the arm when she was being detained. Deposition of

Donald M. Simpson at 124-125.

Plaintiff has not sued the deputy sheriff who affected her arrest. She has, however, named Lawson Lamar, as sheriff of Orange County, Florida as Defendant. Suing Defendant Lamar in his representative capacity is generally "only another way of pleading an action against an entity of which an officer is an agent." Monell v. Department of Social Servs., 436 U.S. 658, 690, n. 55 (1978).

Plaintiff may not assert a cause of action against Defendant Lamar for the actions of a deputy sheriff under the doctrine of respondeat superior. Id. In order to recover for the actions of the deputy sheriff Plaintiff must demonstrate that the constitutional deprivation was the result of a governmental custom, policy, ordinance, regulation or decision

officially adopted and promulgated by the unit's officers. Id. at 690-91.

Therefore, it is clear that Plaintiff''s action against Defendant Lamar will be successful only if a causal link is established between an official policy, ordinance, practice or custom, express or implied, and the plaintiff's injury. Byrd v. Clark, 783 F.2d 1002, 1008 (11th Cir, 1986). Plaintiff alleges in her Third Amended Complaint that the sheriff "failed to have sufficient policies and failed to properly instruct the deputy in the protection of Plaintiff's civil rights." Complaint at paragraph 22. Defendant Lamar has not, however, addressed this issue.

Therefore, Defendant Lamar's Motion to Dismiss the Third Amended Complaint on this issue is DENIED and Defendant shall respond to these allegations in Counts IV

and V within seven (7) days from the date of this Order. The Court reserves ruling on the Motion of Defendant Lamar for Summary Judgment onthis issue as asserted in Counts IV and V of the Third Amended Complaint and directs such Defendants to file a supplement to such Motion, if appropriate, within seven (7) days from the date of this Order. Plaintiff shall respond to this supplement within ten (10) days of Defendant Lamar's supplement. The Court will take this issue under advisement on July 31, 1989, at 5:00 p.m. A hearing will not be held on this matter.

Therefore, Plaintiff's claims for violations of 42 U.S.C. Section 1983 in Counts I, II, IV and V are DISMISSED with prejudice as to all Defendants on all issues except the claim against Defendant Lamar concerning the policy or custom of

the sheriff's office which is alleged to have resulted in the deputy sheriff's use of excessive force on Plaintiff during her arrest.

III

CLAIMS MADE PURSUANT TO 42 U.S.C. SECTION 1985(3)

In Counts IV, V and VII Plaintiff sues Defendants Simpson, Young, GHR, Plaut, Lamar, and Bridges for violations of 42 United States Code Section 1985(3).

To state a cause of action under 42 United States Code Section 1985(3), it is necessary for a complaint to allege four elements: (1) a conspiracy (2) to deprive, directly or indirectly, any person or class of persons of equal protection or a privilege or immunity protected by law; (3) that the conspirators committed some act in furtherance of the conspiracy; and (4) that the plaintiff was "injured in his

person or property" or was "deprived of having and exercising any right or privilege of a citizen of the United States." Griffin v. Breckenridge, 403 U.S. 88, 103-04 (1971). Under 42 United States Code Section 1985(3) it is unnecessary that the conspiracy involve a state actor. See Griffin v. Breckenridge, 403 U.S. 88 (1981).

In order to withstand a motion to dismiss, the Plaintiff must assert at least minimum factual support for the existence of a conspiracy. Robinson v. McCorkle, 462 F.2d 111, 113 (3d Cir.), cert. denied, 409 U.S. 1042 (1972). Again, it is necesssary that the complaint state more than conclusory allegations of deprivations of constitutional rights. Id. at 113. Plaintiff is not entitled to pursue an action merely because she believes,

without factual support, that a conspiracy existed.

Not only does Plaintiff's Complaint fail to plead facts to support a conspiracy in violation of 42 U.S.C. Section 1985(3), making a motion to dismiss appropriate, but also there are no evidentiary facts of record to support such contention.

A. Count IV

Plaintiff conplains about the actions which took place during the divorce proceeding as well as the events which took place proceeding, during, and after the sheriff's sale. The record reflects that Defendants Simpson, Young, and GHR were adversaries to Plaintiff in a contested state court proceeding, and their actions therein do not constitute the basis for a claim for damages under 42 United States Code Section 1985(3).

As to the actions involving the sheriff's sale, Defendants Simpson, Young, and GHR were merely participating in a sheriff's sale that was the result of a lien placed on Plaintiff's interest in realty by Tanya Plaut and an order of a state trial court for foreclosure of such lien. There is no evidence of a plot to initiate and consummate the sale in an improper manner, unauthorized by law, to deprive Plaintiff of her property. Participation in a public sale does not constitute evidence of a conspiracy in violation of 42 U.S.C. Section 1985(3).

Defendant Bridges merely sold the house for Defendant Simpson. The fact that Defendant Young may have referred Defendant Simpson to a realtor is not evidence of a conspiracy between the lawyer, the lawyer's firm, the client,

and the realtor. Defendant Bridges owed no duty to Plaintiff, and there are no facts alleged in the evidence of record that she participated in any conspiracy.

Defendant Lamar carried out an order of a state court judge and executed the sale pursuant to statute. The statute itself is not unconstitutional. There are no facts alleged nor is there evidence of record to support Plaintiff's contention that Lamar conspired against her in violation of 42 U.S.C Section 1985(3). Therefore, the Motions of Defendant Bridges, Simpson, Young, GHR and Lamar to Dismiss Count IV for failure to state a claim under 42 U.S. C. Section 1985(3) are GRANTED. In the alternative, Summary Judgment is granted in favor of such Defendants and against Plaintiff on Count IV.

Count V, Plaintiff sues Defendants Simpson, Young, GHR, Plaut, and Lamar and complains that she has been denied her constitutinal right to own and hold homestead property because "the Florida constitutional provison in effect at the time of the forced sale of her homestead disallowed the forced sale of homestead of married or single persons, but not for single women who were heads of their own households...."[13]

In pertinent part, the Florida homestead provision to which Plaintiff is referring applied, prior to November of 1984, only to property "owned by the head

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13 Plaintiff also makes the conclusory allegation that she was discriminated against because of her status as a former wife of a retired military officer without factual support for this contention. (Complaint paragraph 67).

of a family." 14 "Head of family" is defined as applying to those who are responsible, either legally or morally, for the welfare of someone else. Edward Leasong Corp. v. Uhlig, 652 F. Supp. 1409 (S.D. Fla. 1987); Flannery v. Green, 482 So.2d 400 (Fla. 2d DCA 1986), In re Schoor's Estate, 409 So.2d 487 (Fla. 4th DCA 1982). This provision does not discriminate on the basis of gender, which might have stated a claim under 42 U.S.C. Section 1985(3). Califano v. Goldfarb, 430 U.S. 199 (1977), Holden v. State of Gardner, 420 So.2d 1082 (Fla. 1982). Nor does the provision discriminate between persons who are married and persons who are single. Any person, single or married, who is

14 This provision was amended after the events which are the basis for this action to apply to property owned by a "natural person."

responsible for the welfare of another and resides on property is entitled to the constitutional homestead protection. Plaintiff neither alleges nor contends that she is responsible for the welfare of another while she resided on the subject property. Plaintiff has not stated an independent claim for denial of equal protection under 42 U.S.C. Section 1985(3), and the Motions for Summary Judgment as to Count V are GRANTED.

C. COUNT VII

Count VII asserts that Defendants Simpson, Young, GHR, Plaut, Bridges, and Lamar breached various duties which Plaintiff claims they owed to her. For instance, Plaintiff alleges that Defendants owed a duty to Plaintiff to protect and not to acquire a greater interest in the homestead property of the Plaintiff other than what was awarded to

Defendant Simspon by the Final Judgment, and that Terry Young, her former husband's attorney owed her a duty not to take unfair advantage of her distressed situation.

The wrongs about which Plaintiff complaints arise out of state court litigation in which Plaintiff was an adverse party to Defendant Simpson, who was represented by Young of GHR. The Civil Rights Statutes are not intended to make federal courts appellate courts for review of actions of the state trial courts. Further, Plaintiff has alleged no facts, and none appear of record, to support her contention that any of these Defendants were part of a conspiracy to deprive Plaintiff of a privilege or immunity secured to her by the United States Constitution.

Additionally, it appears from the unrefuted facts of record that Defendant Minnie Bridges did not have a fiduciary duty to Plaintiff, such Defendant being a real estate broker who listed property for sale after Defendant Young had recommended her to his client Defendant Simpson.

Finally, Count VII fails to allege any facts or state a cause of action against Defendant Lawson Lamar.

Therefore, the Motions for Summary Judgment in favor of Defendants Young, GHR, Simpson, Lamar, and Bridges as to Count VII are GRANTED.

IV

CONSTITUTIONALITY OF FLORIDA STATUTE 56.22

In Count III, Plaintiff asserts that the estate statute pursuant to which the forced sale of Plaintiff's home was

conducted, Florida Statute Section 56.22 (1983), is an unconstitutional deprivation of Plaintiff's right to procedural due process because it is void for vagueness due to its provision that the "sale shall take place between the hours of 11:00 a.m. and 2:00 p.m."

Plaintiff alleges in the Count that Defendants Simpson, Young, GHR, Lamar, Plaut, and Bridges operated under an unconstitutional statute to deprive Plaintiff of her property. Plaintiff claims that the statute did not give her notice of the exact time of sale, and therefore the statute is unconstitutional. Plaintiff does not claim that she did not receive notice of the sale or that the sale occurred outside the time specified. Plaintiff simply alleges that the statute is unconstitutional and the sale void

because she was not given a particularized time between the hours of 11:00 a.m. and 2:00 p.m. for the sale.

From the unrefuted facts of record, the sale was conducted pursuant to a lien placed on Plaintiff's share of the house by her former attorney, Ms. Plaut. Young testified that he heard of the sale when his secretary saw the notice in the newspaper. He called the sheriff's office to ascertain the procedure for the sale. Young, GHR, Simpson, and Bridges were not involved in the action which led to the lien being placed on the house. Defendant Bridges had no connection with the Sheriff's sale. Plaintiff has no evidence to support her allegation that there was a conspiracy regarding the sale of the house among Defendant Bridges and the other Defendants named in this Count. defendant Simpson merely took advantage

of the procedure provided by law and appeared at the designated time to place a bid on the property. Plaintiff had the same opportunity to appear at the designated time to bid on the property. Defendant Lamar merely conducted the sale pursuant to law and in accordance with a state court order. There is no evidence of any inappropriate connection between the parties. The Court finds no reason to set aside the sale or declare that the statute is unconstitutional. Therefore, Defendants' Motion for Summary Judgment on Count III are GRANTED.

V

CLAIM MADE PURSUANT TO 18 U.S.C. 2520

In Count IX Plaintiff alleges that in violation of 18 U.S.C. Section 2520 Defendant Simpson, Young, and GHR placed an electronic eavesdropping device on her personal telephone for a period of

twenty-four months and that Plaintiff discovered the device during the month of March, 1984.

While the allegations of Count IX are sufficient to withstand a motion to dismiss, there is no evidence of record to support Plaintiff's contention that Defendants Young and GHR placed such device on her telephone. Plaintiff's affidavit (Doc. No. 176) is silent on this claim. Defendant Young in his deposition directly denies any knowledge of or involvement in wiretapping or electronic eavesdropping on Plaintiff's telephone by Defendant Simpson (Doc. No. 162, p.51). Plaintiff in her deposition speculated that Tim Simpson put a bug on her telephone because he had possession of the house for five months while she was gone, and "bacause he is the only one who would dream up something like that."

(Doc. No. 182, at p. 52). Plaintiff did not respond to a request that she turn the wiretap over to Defendants, stating in her deposition that she sent it to Washington. She further testified that a neighbor discovered the wiretap, but the record contains no statement by the neighbor.

Therefore, Plaintiff has failed to carry her burden to come forward with competent evidence in support of her claim that Defendants GHR and Young violated 18 U.S.C. Section 2520. Summary Judgment is GRANTED in favor of such Defendants and against Plaintiff on Count IX of the Third Amended Complaint.

Defendant Simpson in his Motion for Summary Judgment does not clearly address Count IX. Further there are no evidentiary facts of record presented by Defendant Simpson refuting Plaintiff's

claim that he placed a wiretap on her telephone in violation of 18 U.S.C. Section 2520. Additionally, the Court cannot ascertain if Tim Simpson, referred to by Plaintiff in her deposition, and Defendant Donald Simpson's Motion to Dismiss this Count of the Third Amended Complaint is DENIED, and such Defendant shall file his response to this Count within seven (7) days from the date of this Order. The Court reserves ruling on the Motion of Defendant Simpson for Summary Judgment as to Count IX of the Third Amended Complaint and directs such Defendant to file a supplement to such Motion, if appropriate, within seven (7) days from the date of this order. Plaintiff shall respond to such supplement within ten (10) days of the filing of such supplement. No hearing will be held on such supplemented motion

for summary judgment, and the supplemented motion of Defendant Simpson for summary judgment will be taken under advisement by the Court at 5:00 p.m. on July 31, 1989.

VI

A. COUNT VI

In Count VI Plaintiff seeks a declaratory judgment under the doctrine of pendent jurisdiction and asserts that the profits from the sale of the house should be held in a resulting or constructive trust because the final judgment in the state court divorce proceeding awarded her a half interest in the house. Additionally, Plaintiff claims that Defendant Simpson purchased the house with her money. Although the allegations in this Count reference Defendants Young and GHR, Plaintiff names only Mr. Simpson as a Defendant in this

Count.

Plaintiff is essentially contending that her former husband improperly purchased her one half interest in the house at the sheriff's sale, sold the house, and made a profit from it.

The record is absolutely devoid of any evidence in support of the claim that the money from the sale of Plaintiff's half interest in the house should be held in a resulting or constructive trust for her. Additionally, Plaintiff's former husband, his attorney, and his attorney's law firm do not owe Plaintiff the duties she alleges in this Count as they were involved as adversaries in a state court legal proceeding. Therefore, having ascertained no facts of record to support Plaintiff's contentions in Count VI, Defendants Simpson's Motion for Summary

Judgment is GRANTED. 15 Count VI of the Third Amended Complaint is DISMISSED.

B. Count VIII

In Count VIII, Plaintiff seeks the pendent jurisdiction of this Court and sues Defendants Simpson, Young, GHR, and Lamar for the false arrest of Plaintiff on or about October 6, 1983.

In exercising the Court's discretionary jurisdiction over this

15 Having dismissed the allegations which attacked Defendant Simpson's purchase and sale of the house because of the claimed invalidity of the homestead exemption in the Florida Constitution, having found that the sheriff's sale was not defective, and having determined that Plaintiff's recourse for alleged wrongs occurring during the pendency of the state court proceedings lies within the jurisdiction of the state appellate courts, this Court has considered declining to exercise its pendent jurisdiction over Count VI. United Mineworkers of America v. Gibbs 383 U.S. 715, 725 (1966). In the interest of judicial enconomy, the Court has determined this claim.

claim, the Court concludes that Summary Judgment is appropriate as to Count VIII. The unrefuted facts of record show that the sheriff's office acted pursuant to a state court order which granted permission for forcible entry of Plaintiff's house during recovery of Defendant Simpson's personal property. This order was granted after a hearing which Plaintiff attended. The court order gave the sheriff the authority to arrest any person who interfered with the execution of the order.

Plaintiff's Third Amended Complaint states that she protested the taking of some items of personal property and was then arrested. Complaint paragraph 16. Plaintiff's affidavit acknowledges that she objected to the seizure of the items during the entry. (Doc. No. 177, filed May 25, 1989 at paragraph 14.) Further,

Plaintiff stated in her deposition that she resisted arrest. Therefore, there is no evidence of record to show that Plaintiff was falsely arrested. Ther sheriff's deputy was executing a state court order when he went to the house and ultimately arrested Plaintiff on that occasion. Defendants Young and Simpson were merely pursuing legal means as adversaries to Plaintiff in a legal proceeding to recover Defendant Simpson's property. In essence, Plaintiff is complaining about state court orders which divided the marital estate and gave Defendant Simpson the right and means to recover his property. 16 Based on the

16 It is unclear whether this count is being asserted solely as a pendent claim or as a claim pursuant to 42 U.S.C. 1983. The Court finds that the unrefuted facts of record demonstrate that summary judgment is appropriate on Count VIII regardless of whether this claim is considered as a claim pursuant to 42 U.S.C. Section 1983 or as a pendent claim

unrefuted facts of record, Summary Judgment as to Count VIII is GRANTED in favor of Defendants.

CONCLUSION

The Third Amended Complaint is DISMISSED WITH PREJUDICE as to all counts and as to all parties except the allegations concerning the deputy sheriff's use of excessive force during Plaintiff's arrest in Counts IV and V and the allegations as to Defendant Simpson in Count IX. The Court reserves ruling on Defendant Simpson's Motion for Summary Judgment on Count IX of the Third Amended Complaint and Defendant Lamar's Motion for Summary Judgment on Counts IV and V of the Third Amended Complaint in accordance with his order.

DONE AND ORDERED in Chambers at

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for false arrest.

Orlando, Florida this 10th of July, 1989.

/S/ PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

Copies to:
All Counsel of Record
in 85-455-CIV-ORL-19

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
CASE NO: 85-455-Civ-Orl

I certify the foregoing to be a true and correct copy of the original.
DONALD M. CINNAMOND, Clerk
United States District Court
Middle District of Florida
By: /S/ Deputy Clerk

ELEANOR S. SIMPSON

-V-

DONALD M. SIMPSON, TERRY C. YOUNG, GILES, HEDRICH & ROBINSON, P.A. TANYA PLAUT, MINNIE BRIDGES AND LAWSON LAMAR, SHERIFF, ORANGE CO. FL.
DEFENDANTS /

NOTICE OF APPEAL OF A FINAL SUMMARY JUDGEMENT

COMES NOW Eleanor S. Simpson in Proper Person and timely files this her Notice of Appeal of the Court Order dated July 10, 1989 by the Honorable Judge Patricia Fawsett of the Middle District of Florida, UNITED STATES DISTRICT COURT, Orlando Division.

Judge Fawsett dismissed with Prejudice

to all counts and to all parties the Third Amended Complaint originally scheduled to be tried in its entirity with a Trial by Jury during the August term, 1989. This dismissal was dated July 10, 1989. Pre-trial was scheduled for July 11, 1989 in the Office of Duncan Dowling, Attorney. My attorney, Judge Douglas Lambeth and his legal assistant flew from Ft. Lauderdale to Orlando, FL. for this Pre-Trial Compliance, July 11, 1989. When he arrived in Orlando he was informed that Judge Fawsett had already:

"dismissed the Third Amended Complaint with Prejudice as to all counts and as to all parties except the allegations concerning the deputy sheriff's use of excessive force during plaintiff's arrest in Counts 4 & 5 and the allegations as to defendant Simpson in Count 9. The court reserved ruling on Defendant Simpson's Motion for Summary Judgement on Count 9 of the Third Amended complaint and Defendant Lamar's Motion for Summary Judgement on Counts 4 & 5 of the Third Amended Complaint. No hearing was to be held. The Court will take the motion for summary

judgement under advisement on July 31, 1989 at 5:00pm s/Judge Fawsett 7-10-89 EOD 07-19-89, Copies to Counsel."

The docket sheets at the U.S. District Court are all stamped with Appeal --Jury Trial as the result of an Order dated

"7-29-85 NR 28 Order In accordance with Federal Rule of Procedure 60 (a) the Clerk of Courts is directed to RE-OPEN the case file. Plaintiff has (20) days within which to amend her complaint. Judge Sharp s7-29-85 EOD 7-29-85 etc. cert. copy to USCA.".
Following this Re-Open order from the 11th District Court of Appeals Mr. James Lavigne subsequently filed 1st Amended Complaint, 2nd Amended Complaint and finally Third Amended complaint compying with all the directions of the then presiding Judge Kendall Sharp.

Judge Fawsett has dismissed this Third amended Complaint previously set for Trial with No Hearings what so ever. Reverable Error has been made & there does exist a conflict if interest since the following are known facts in Case

Fed #85-455:

1. When Case Fed #85-455, April 16, 1985 started with COMPLAINT: Violation of Civil Rights-that the Defendants have conspired to defeat the Plaintiff of her Homestead Property without Due Process, Defendant Lawson Lamar was Sheriff of Orange County, Fla. but since the election of 1988, Lawson Lamar is presently State Attorney.

2. Defendant, Terry Young, Attorney is the Nephew of Judge George Young, Chief Judge of U.S. Middle District of Fla. Mr. Young coincidentally was my ex-husbands Attorney where I was scheduled to be the Landmark case in the State of Fla. on Federal Law 97-252. As the result of a Per

Curiam Affirmance at the 5th District Court of Appeals Jan. 29, 1984, my Writ of Certiorari is on file in this case #85-455 this was taken to the Supreme Court of the United States by Mr. Robert Shapiro from the Tampa, Fla. area. They dismissed my writ of certiorari there stating it was up to the State of Florida regarding dividing a military pension and Martin Company Pension as Equitable Distribution of Marital Assets.

3. Minnie Bridges, Realtor sold my Homestead while it was at 5th D.C.A. Case #Civ. 81-12127. She is the sister of Judge Cecil Brown, 9th Circuit Court, Orlando, Fla.

All parties on the attached sheet are called upon to take Notice. I hereby

certify that a copy of the foregoing has been furnished this date by mail delivery to the attached sheet.

I further certify that this Notice of Appeal is being hand delivered to the United States Federal Court-Middle District on the 4th day of August, 1989.

/S/ Eleanor S. Simpson
Eleanor S. Simpson-Pro Se
10751 William Tell Dr.
Orlando, FL 32821
Telephone #407-351-2018

Please note: Eleanor S. Simpson is acting Pro Se for Appeal purposes. Judge Lambeth is still her Attorney of Record.

FILED AUG 7, 1989

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ELEANOR S. SIMPSON

Plaintiff

v.

DONALD M. SIMPSON, et al.

Defendants

_____/

ORDER

This case comes before the Court on the following Motions:

1. Defendant Simpson's Supplemental Motion for Summary Judgment (doc. No. 197, filed July 14, 1989), Memorandum in support of Supplemental Motion for Summary Judgment (Doc No. 198, filed July 14, 1989), and Notice of Filing Affidavit in Support of the Supplemental Motion for Summary Judgment (doc. No. 200, filed July 14, 1989), and Plaintiff's Response

to Defendant Simpson's Supplemental Motion for Summary Judgment.

2. Defendant Lamar's Supplement to Motion for summary Judgment (Doc. No. 201, filed July 17, 1989), Memorandum of Law attached thereto, and Plaintiff's Response to Defendant Lamar's Supplemental Motion for Summary Judgment (doc. No. 208, filed July 27, 1989).

3. Defendant Simpson's Motion for Extension of Time to file Pre-Trial Compliance (doc. No. 179, filed May 26, 1989), and Plaintiff's Motion for Extension of Time to File Unilateral Pretrail Catalogue (doc. No. 186, filed June 21, 1989). These Motions are GRANTED. The remaining parties are hereby ORDERED to file their pretrial stipulation no later than august 8, 1989, at 9:00 a.m. Failure to comply with this order may result in dismissal of this

action.

4. Plaintiff's Motion to accept late filing of memorandum in opposition to Defendant Minnie Bridges' Motion for Summary Judgment (doc. No. 187, filed June 21, 1989), and Defendant Minnie Bridges' Objection to Plaintiff's Motion to Accept Late Filing of her Memorandum of Law in Opposition to Defendant Minnie Bridges' Motion for Summary Judgment (doc. No. 193, filed June 30, 1989). This Motion is moot as a result of the Court's order of July 10, 1989, and it is therefore DENIED. The objection is also moot.

In his Supplemental Motion Defendant Simpson addresses Plaintiff's allegation in Count IX of her third amended complaint that he placed an electronic eavesdropping device on Plaintiff's telephone thereby violating 18 U.S.C.

Section 2520. Defendant Simpson denies this allegation in his affidavit and asserts that even if he did wiretap the telephone in Plaintiff's house, it was not a violation of 18 U.S.C. Section 2520 because this statute does not apply to events that occur in the marital estate and the alleged wiretapping took place in the marital estate by virtue of the fact that it occurred prior to the dissolution of his marriage to plaintiff. Plaintiff responds that the eavesdropping occurred after the marriage was dissolved and submits the affidavit of Mary Cathering McCarkle Pruit to support her allegations that there was an electronic eavesdropping device on her telephone and that Defendant Simpson was responsible for it. As a result of this conflicting evidence, it appears that there is a genuine question of material fact and

Defendant Simpson's Supplemental Motion (Doc. No. 197) is DENIED.

DEFENDANT LAMAR'S MOTION

In his supplement to his motion for summary judgment, defendant Lamar seeks summary judgment on Counts, IV and V of Plaintiff's third amended complaint which allege that a deputy sheriff used excessive force during Plaintiff's arrest. This court has previously determined (see Doc. No. 194, filed on July 10, 1989, at 14) that in order to state a cause of action against Defendant Lamar for the actions of a deputy sheriff Plaintiff is required to demonstrate that the constitutional deprivation was the result of a governmental custom, policy, ordinance, regulation or decision officially adopted and promulgated by the officers. See, e.g., Monell v. New York City Dep't of Social Services, 436 U.S.

658, 690-92 (1978); Brown v. city of Cleviston, 848 F.2d 1534, 1537 (11th Cir. 1988); Byrd v. Clark, 783 F.2d 1002, 1008 (11th Cir. 1986).

Defendant Lamar asserts that summary judgment is warranted because the affidavit submitted in support of his supplement to his Motion for summary judgment indicate that the

deputy sheriff who arrested Plaintiff during the forcible entry of Plaintiff's home did not use excessive force and that any alleged use of excessive force during the arrest was not pursuant to a custom, policy, ordinanace or decision adopted and promulgated by the office of the Sheriff. In response to Defendant Lamar's Supplement, Plaintiff has filed an affidavit of a person who was present during the arrest, Mary Catherine McCarkle Pruitt, which describes the deputy sheriff's excessive use of force. Plaintiff assert that as a result of this affidavit there is conflictiong evidence concerning the deputy sheriff's behavior which creates a genuine issue of material fact sufficient to withstand Defendant Lamar's Motion for Summary Judgment. Plaintiff, however,

"concedes that she has no evidence that [the deputy sheriff's alleged use of excessive force] resulted from a policy of the Sheriff of Orange County...."

Plaintiff's Response to Defendant, Lawson Lamar's Supplemental Motion for Summary Judgment (Doc. No. 208, filed July 27, 1989), at 2.

The United States Supreme Court has determined that summary judgment is appropriate against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). the Court has further explained that "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise

properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986)(emphasis in original). Therefore, the fact that there may be a dispute over whether excessive force was used is not sufficient to withstand a motion for summary judgment when there is no evidence to establish the existence to her case, i.e., that the alleged excessive use of force was the result of an official policy, statute, ordinance, regulation, custom, or usage. See Brown v. City of Clewiston, 848 F.sd 1534, 1537 (11th Cir. 1988). therefore, Defendant Lamar's Supplemental Motion for Summary Judgment is hereby GRANTED. The allegations in Counts IV and Vof Plaintiff's Third Amended Complaint

concerning Defendant Lamar's liabilty for a deputy sheriff's use of excessive force during the arrest of Plaintiff are DISMISSED with prejudice.

DONE AND ORDERED in Chambers at Orlando, Florida, this 4th day of August, 1989.

/S/ PATRICIA C. FAWSETT
PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

Copies to:
All Counsel of Record
in 85-455-CIV-ORL-19

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO: 85-455-Civ-Orl-19

ELEANOR S. SIMPSON,
PLAINTIFF,

-v-

DONALD M. SIMPSON, TERRY C. YOUNG,
GILES, HEDRICK & ROBINSON, P.A.
TANYA PLAUT, MINNIE BRIDGES &
LAWSON LAMAR, SHERIFF, ORANGE CO. FLA.
DEFENDANTS /

NOTICE OF APPEAL OF A
FINAL JUDGEMENT

Comes Now Eleanor S. Simpson in Proper Person and timely files this her Notice of Appeal of the Court Order dated July 10, 1989 and Order dated Aug. 7, 1989 #211 (Docket-Fed.) by the Honorable Patricia Fawsett of the Middle District of Florida, Orlando Div.

Order:

Defendant Lamar's Supplemental Motion for Summary Judgement (Docu #201) is Granted.

> The allegations of Counts 4 & 5 of Plaintiff's 3rd Amended Complaint concerning Lamar's liability for a deputy sheriff's use of excessive force during the arrest of Plaintiff are DISMISSED WITH PREJUDICE. s/Judge Fawsett 8-08-89 eod 08-07-89

Plaintiff has again been denied the right to a Trial by Jury in Federal Court where the deprivation of real & personal property was taken from the Plaintiff as a result of unconstitutional official policy of Sheriff Lawson Lamars Sheriff's Dept. of Orange County, Florida without Due Process of Law and without the Right of Redemption. Conspiracy with State Judges & Attorneys "under color of State

Law" was to be made factual evidence with all the Discovery Depositions & Exhibits taken for the past four years at the time of the Trial by Jury. 42 U.S.C. 1983 & 42 U.S.C. 1985.

All parties on the attached sheet are called upon to take Notice. I hereby certify that a copy of the foregoing has been furnished this date by mail delivery to the attached sheet.

I further certify that this Notice Of Appeal is being hand delivered to the United States Federal Court-Middle District on the 31st day of August, 1989

I certify the foregoing to be a true and correct copy of the original.
DONALD M. CINNAMOND, Clerk
United States District Court
Middle District of Florida
By: /S/ Deputy Clerk

/S/ Eleanor Simpson
Eleanor S. Simpson, Pro Se
10751 William Tell Dr.
Orlando, FL 32821
Telephone #407-351-2018

EXCERPTS FROM THE

REPORT OF

THE FLORIDA SUPREME COURT

GENDER BIAS STUDY COMMISSION

1990

EXECUTIVE SUMMARY

REPORT OF

THE FLORIDA SUPREME COURT

GENDER BIAS STUDY COMMISSION

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I. INTRODUCTION

The Commission found during its two years of hearings and study that gender bias--discrimination based solely on one's sex--is a reality for far too many people involved in the legal system. And invariably, those who regard gender bias as an illusion have never suffered its affects. Indeed, the overwhelming weigh of evidence and research gathered by the Commission supports only one possible conclusion: Although some may ignore its existence, gender bias permeates Florida's legal system today. Certainly the Commission is aware that the practice of law often only reflects our society's larger culture. Gender bias surely did not originate with lawyers alone. Nevertheless, gender bias is practiced to a disturbing degree by members of this state's legal profession, often in forms that have

become highly institutionalized. The refusal of some lawyers to acknowledge this fact is one of the primary mechanisms by which gender bias is perpetuated.

From its inception, the Commission's charge was to document the true scope of this problem and propose solutions. We were not asked simply to determine if gender bias exists in Florida, because this question already had been resolved by a detailed monograph published by Charlene Carres and the Florida State University Policy Studies Clinic. After reviewing this monograph, the Chief Justice of Florida and his colleagues on the Florida Supreme Court concluded that gender does infact exist in the state's legal system. The Court then created the Commission and ordered it "to determine in what areas of our legal

society bias based on gender exists, and recommend measures to correct, or at least minimize the effect of, any such bias."

This Report fulfills the Commission's mandate. The findings and recommedations made by the Commission are based upon public hearings, regional meetings, case studies, scholarly research and a variety of empirical studies.

The Commission undertook a multidisciplinary approach to the investigation and preparation of its Report. It held public hearings and regional meetings around the State, receiving testimony and reports from legislators, professionals in a wide array of fields, and all others who wished to speak on the subject of gender bias. Regional meetings were informal

discussions primarily with women lawyers and other interested residents of communities around the State.

In addition to the hearings, the Commission undertook extensive research. Our studies included five major surveys of member of The Florida Bar, Florida judges, members of the Florida Association for Women Lawyers, and students in Florida law schools. Among the topics addressed by these surveys were judicial attitudes, equitable distribution and disparate treatment. Other supplemental studies examined adult arrest and sentencing patterns, the juvenile justice system, prostitution, and the treatment of male and female court personnel, including assistant state attorneys and assistant public defenders. We also conducted a preliminary study on facitlities and

programs for men and women incarcerated in Florida's jails.

The Commission heard detailed presentations on child support enforcement by the National Conference of State Legislators and on domestic violence by the Dade County Domestic Violence Program. We conducted an analysis of all reported family law decisions from January through June 1989 and completed a review of published and unpublished scholarly works in all areas of the law relevant to this Report.

The full Commission discussed each finding and recommendation before its adoption. Not every Commissioner agreed with every finding and recommendation. Nevertheless, the Report in its totality represents the consensus of the entire Commission.

This Executive Summary reproduces these findings and recommendations and summarizes the discussion that accompany them. The topics covered here are gender bias in the dissolution of marriage, custody and child support; gender bias in criminal justice; and gender bias in the legal profession.

The section on "Gender Bias in Criminal Justice" addresses Domestic violence, sexual battery, crime and incarceration, prostitution and juvenile justice.

Finally, the section on "Gender Bias in the Legal Profession" addresses the courthouse enviroment, professional opportunities, the law firm enviroment, legal education and gender bias in usage of language.

II. GENDER BIAS IN THE DISSOLUTION OF MARRIAGE, CUSTODY AND CHILD SUPPORT

Women and children experience life after divorce far differently than men. While all family members suffer the trauma of divorce, only the women and children's pain is compounded by being diprived of their economic well-being. This is the harsh reality of most divorce in Florida today. Although Florida's "no-fault" divorce statute is written in gender-neutral language, the Commission found that judicial decisions based upon this language are gender-discriminatory in application. The reason largely is an unrealistic assumption by judges that men an women are economic equals in present society.

The Commission also determined that men customarily retain more than half of

the assets of the marriage and leave with an enhanced earning capacity. The remaining family members, however, are left with less than half of the marital assets and a severely diminished and declining earning capacity.

The Commission has concluded that Florida's judiciary minimizes the time, energy, and lost opportunities involved in being a homemaker and primary caretaker of children. Judges generally are reluctant to acknowledge that these contributions are a genuine partnership asset of the marriage.

Moreover, the Commission found that Florida's judiciary denies women the economic resources to retain competent legal representation. As a result, women are critically disadvataged in enforcing their legal right alimony, equitable distribution of marital assets, and child support.

Findings

a. Economics of Divorce

1. Men customarily retain more than half of the assets of the marriage and leave with anenhanced earning capacity. The remaning family members are left with less than half of the marital assets and a severely dimished and declining earning capacity.
2. A homemaker's contributions of time and energy, as well as the opportunities she has forgone, often are minimized by Florida's courts. Many judges are especially reluctant to acknowledge that these contributions are a genuine resource of a marriage.
3. Post-divorce families headed by women are the fastest growing segment of those living in poverty.

4. Older women whose marriages end in divorce are most likely either to have abondoned their own aspirations or to have devoted their lives to furthering their husbands careers. They are not adequately compensated by application of the present system of alimony and equitable distribution of marital assets.

b. Access to Justice

1. Women who lack means are routinely denied their statutory right retain competent legal representation. Without competent counsel, women are critically disadvataged in enforcing their right to alimony, equitable distribution of marital assets and child support.

2. Many lawyers will not represent woman in divorce cases because women generally have fewer economic

resources and therefore cannot afford the fees.

3. Florida's public legal aid system is not a realistic alternative to private representation. There are not enoug legal aid attorneys, nor are there any plans to increase the number to meet the need.

4. Current statutes require a judge to order the more financially secure spouse to pay the other spouse's ongoing legal fees and support if the request is well founded. However, these laws generally are not observed or are observed in a manner biased against women.

5. Many judges fail to require the more financially secure spouse to pay the other spouse's fees and costs because of a false perception that attorneys can or are willing to

"finance" divorce actions for their clients.

6. An award of attorney's fees, if it occurs at all, usually comes at the close of the case. Often the award is reduced by the judge, especially if a woman attorney represented a woman litigant.

c. Judicial Attitudes

1. Most of Florida's circuit court judges dislike dealing with family law matters. This attitude can affect the outcome of cases.

2. Many judges in Florida presume that a woman will enter the job market after divorce regardless of the length or conditions of the marriage and notwithstanding her age, lack of training or justifiable expectations.

3. Many Florida judges fail to appreciate or recognize the difficulties for women in starting a career at an age when many men are close to retirement.

d. Appellate Review

As a consequence of limited finances, many women are virtually forclosed from appellate review of trial court decisions. Frequently they cannot afford the trial transcript or appellate counsel necessary for an appeal.

e. Equitable Distribution and Spousal Support

1. Fault plays a definite role in some marital dissolutions, despite the characterization of Florida's divorce law as being "no-fault." The statute's alimony section provides that the adultery of either spouse may be considered when

determining the amount of the alimony, if any. Because women historically are the ones who must seek alimony, however, they have been disproportionately affected by findings of fault.

2. In many areas of the state, the courts have virtually abandoned permanent alimony or substituted in its place unrealistic rehabilitative alimony awards.

3. Many judges fail to ward permanent alimony, prefering instead to use the vehicle of equitable distribution. Yet, because men usually have a greater earning potential, women are disadvataged by "equitable" distribution when martial assest are too slight to provide a sufficient income.

4. In equitable distributions, men generally receive sixty-five to seventy-five percent of the marital assests compared to twenty-five to thiry-five percent for women.

5. The new equitable distribution statute has an extensive list of factors to be considered in distributing assets, but it lacks a requirement of written findings of fact. This allows a trial court almost unreviewable discretion in dividing marital property.

6. The major asset of most marriages is the earning capacities of the partners.

7. Before the no-fault divorce and equitable distribution statutes were adopted, courts usually allowed the custodial parent and children to occupy the family home after

divorce, in addition to receiving support. Common practice today, however, is to order sale of the family home so that a cash settlement can be made for equitable distribution pruposes.

8. As a result of their almost unlimited discretion, trial courts distribute marital assets either as property or alimony with a lack of certainty and consistency. This may lead to inappropriate property settlements between the parties.

Recommemdations

a. Equitable Distribution and Spousal Support

1. The legislature should adopt the concept of community property be providing that marital assets enumerated in the equitable

distribution statute be considered joint marital assets.

2. There should be a presumption that all marital assets be divided evenly.

3. Even if it rejects the concept of community property, the legislature should amend the dissolution statute to require that equitable distribution awards have explicit findings of fact tht include the valuation of assets. Also, the certainty and consistency previously lacking in Florida appellate decisions should be encouraged by a presumption in favor of equal division and a statutory requirement that unequal division be supported by factual findings based on enumerated factors. Without such a requirement, the disparities of the

past will continue. A presumption of equal division and the husband's incentive to gain an advantage through continued litigation and would improve the ability of the appellate courts to review cases....

5. Spousal support awards for marriages of long duration should be designed to equalize the standards of living of post-divorce households at the time of dissolution. The current standard seeks only to maintain the standard of living established during the marriage. A rebuttable presumption in favor of permanent periodic alimony in long-term marriages is appropriate.

6. The legislature should amend the dissolution of marriage statute to require that:

a. Each equitable distribution judgment should contain findings of fact, including determination of values of the assets and the reasons for the award; or

b. In the alternative, if a trial judge does not divide property evenly, the judgment should contain findings of fact justifying the result.

7. If a judge awards periodic alimony for equitable distribution purposes, the award should not terminate on remarriage or death. The party wishing to terminate spousal support than would be required to file a modification petition, and written findings should be required.....

d. Judiciary

The Florida Conference of Circuit Judges should establish an annual comprehensive

judicial training and education program in family law that includes the economic consequences of dissolution and ways in which judicial decisions disproportionately effect each gender. Attendance should be mandatory for all judges hearing family law matters.

e. Access to Justice

Judges must eliminate the egregious imequity caused by their failure to award a disadvantaged spouse temporary and final fees and costs provided by law.

f. Prenuptial Agreements

Because of the failure of equitable distribution, some couples enter into prenuptial agreements requiring an even split of assets upon dissolution. Unfortunately, the majority of persons remain unaware of their legal rights upon entering a marriage. Thus, when a

couple applies for a marriage license, they should receive a pamphlet outling current Florida case law and legislation regarding marital rights, dissolution, custody, child support and enforcement.

g. Family Court or Family Divisions

Where feasible, the chief judge of each circuit with more than five circuit judges sitting in a single county should create a family law division.

h. Mediation

1. The Commission recommends mandatory mediation for disputes about parental responsibility, except when domestic violence is reported to exist in the family. The primary focus of mediationwould be to require parents to formulate a parenting plan. This would divert parents from fighting over possessory labels, such as custody,

by focusing instead on formulating a practical plan for raising the children.

2. Mediation services should require divorcing parents to attend classes on the impact of divorce trauma on their children, as well as the problems they are going to encounter as they divorce and what is expected of them. Noncompliance would be a factor for the court to consider in approving a parenting plan and subsequent visitation.

THE PRESSING NEED TO ELIMINATE GENDER BIAS in Florida's Justice System

by Justice Gerald Kogan

"Gender bias"-irrational discrimination based on a person's sex-is an unfortunate aspect of nearly every Florida legal institution. This is the reality disclosed in two years of study by the Florida Supreme Court Gender Bias Study Commission, whose final report is summarized on the pages that follow.

In fact, gender bias threatens to undermine this state's policy of providing equal protection for all its citizens. Gender bias belies the Florida Constitution's guarantee that all persons "are equal before the law and have inalienable rights, among which are the right ... to be rewarded for industry." Too often in Florida

equality before the bar and bench and the right to be rewarded for industrious advocacy depend heavily on one's gender.

The final report constitutes the most thorough documentation of this problem over undertaken in Florida. Our analysis and recommendations are based on thousands of hours of work and research by commissioners, legal scholors, practicing attorneys, legal assistants, and hundreds of individuals who testified before commission hearings held throughout the state. Every aspect of Florida's justice system was investigated, in keeping with the charter issued to this commission by Chief Justice Parker Lee McDonald on June 7, 1987.

The findings of the commission amply illustrate the pressing need to rid our profession and our professional

lives of gender bias. In an effort to achieve this goal, the commission also has provided an extensive series of recommendations. These include proposed reforms by the Florida Supreme Court, the legislature, The Florida Bar, other professional organizations, and the state's law schools. Although some commissioners dissented from particular findings or recommendations, the oeverall report was approved by the consensus.

By publishing the condensed report in the Florida Bar Journal, the commission hopes to inform every Bar member of both our findings and recommendations. We publish these materials with the hope of disclosing a serious problem in our justice system that, in fairness to ourselves and out

of respect for our constitution, we must make every effort to eliminate.

A member of the Supreme Court since 1987. Justice Kogan chaired the Supreme Court Gender Bias Study Commission.

The Florida Bar Journal/May 1990

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 89-3673 & 89-3804

D.C. Docket No. 85-00455-CIV-ORL-19

ELEANOR S. SIMPSON,

Plaintiff-Appellant,

versus

DONALD M. SIMPSON, TERRY C. YOUNG, TANYA PLAUT, GILES, HEDRICK & ROBINSON, P.A., MINNIE BRIDGES, and LAWSON LAMAR, as Sheriff, Orange County, Florida,

Defendants-Appellees.

Appeals from the United States District Court for the Middle District of Florida

---

(November 15, 1990)

Before KRAVTCH and ANDERSON, Circuit Judges, and ATKINS*, Senior District Judge.

PER CURIAM: AFFIRMED. See 11th Cir.R. 36-1.

*Honorable C. Clyde Atkins, Senior U.S. District Judgefor the Southern Districtof Florida, sitting by designation.

Supreme Court, U.S.
FILED
APR 23 1991
OFFICE OF THE CLERK

No. 90-1340

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1990

ELEANOR S. SIMPSON

Petitioner,

vs.

DONALD M. SIMPSON; TERRY C. YOUNG; GILES, HEDRICK & ROBINSON, P.A.; TANYA PLAUT; LAWSON LAMAR, SHERIFF OF ORANGE COUNTY, FLORIDA; AND MINNIE BRIDGES;

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENTS'S BRIEF IN OPPOSITION

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Minnie Bridges

QUESTIONS PRESENTED

Respondents would respectfully submit that neither the decision below nor the facts contained in the record, raise the questions presented in the Petitioner's brief. Therefore, Respondents respectfully restate the questions presented that relate to this Court's discretionary jurisdiction to issue a Writ of Certiorari:

I.

WHETHER SALE BY SHERIFF OF PETITIONER'S HALF INTEREST IN HER FORMER MARITAL RESIDENCE WAS CONDUCTED PURSUANT TO A CONSTITUTIONAL STATE STATUTE AND WHETHER PETITIONER WAS DENIED SUBSTANTIVE AND PROCEDURAL DUE PROCESS.

II.

WHETHER THE PETITIONER WAS DENIED SUBSTANTIVE AND PROCEDURAL DUE PROCESS WHEN SHE FAILED TO MAKE A BID ON HER FORMER MARITAL RESIDENCE AND WHEN SHE WAS NOT ALLOWED AN OPPORTUNITY TO REDEEM PRIOR TO FINAL DEPRIVATION OF HER PROPERTY.

III.

WHETHER THE TRIAL COURT ERRED IN DISMISSING WITH PREJUDICE AND GRANTING RESPONDANT'S MOTION FOR SUMMARY JUDGMENT ON PETITIONER'S CLAIMS PREDICATED UPON ALLEGATIONS OF UNLAWFUL ARREST AND EXCESSIVE USE OF FORCE.

IV.

WHETHER THE TRIAL COURT ERRED IN HOLDING THAT PETITIONER FAILED TO ADEQUATELY PLEAD OR PROVE A CONSPIRACY BECAUSE THE "UNDER COLOR OF STATE LAW" REQUIREMENT OF 42 U.S.C. §1983 HAD NOT BEEN MET.

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JURISDICTIONAL REASONS FOR DENIAL OF WRIT

Petitioner has provided no jurisdictional basis for the Supreme Court to accept certiorari. Rule 14 of the Supreme Court Rules provides that a petition for writ of certiorari shall contain

> .1.(j) A direct and concise statement amplifying the reasons relied on for the allowance of the writ. See Rule 10.

Supreme Court Rule 10 provides that a petition for a writ of certiorari will be granted "only when there are special and important reasons therefor." Rule 10 further delineates the character of reasons that will be considered, including the following:

> .1.(a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States Court of appeals on the same matter; or has decided a federal question in a way in conflict with the state court of last record; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a

> departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.
>
> (c) When a state court or United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

Clearly, Petitioner has failed to comply with either Supreme Court Rule 14.1.(j) or Rule 10.1.(a)-(c). Respondents respectfully submit that Petitioner's lack of compliance with these rules stems from Petitioner's total inability to provide a reasonable basis for this Court to accept certiorari in this matter. The Petitioner has provided this Court with none of the above basis for granting the writ of certiorari. Fur-

ther, the only basis for jurisdiction the Petitioner has alleged in her brief is Title 28, United States Code §1254(1). Page 3 of Petition. Said provision is merely the general jurisdictional statement which indicates that cases in the Court of Appeals may be reviewed by the Supreme Court by writ of certiorari.

There is nothing new before this Honorable Court that was not presented both to the 11th Circuit Court of Appeals and the Middle District (trial) Court, Orlando, Florida. In essence, Petitioner reargues the entire case as presented at the trial court and 11th Circuit levels. Petitioner does not allege any recognizable error in either court's decision. Clearly, Petitioner just does not like what the trial court and 11th Circuit decided. There are no reviewable or reversible questions from either the trial court's decision or the 11th Cir-

cuit's per curiam affirmance of the same.

The decision at the trial court level turned on its own facts affecting no others than the litigants participating in the matter. The trial court's order, granting various motions to dismiss and summary judgment, dated July 10, 1989, was 27 pages in length. It addressed the record evidence in combination with the applicable law on each issue presented. The clear conclusion of the trial court was that Petitioner had not presented any record evidence to support her claim and summary judgment was entered accordingly. Perhaps the most telling remark of the trial court appears at page 5 of its order where it was stated as follows:

> This complaint is essentially a complaint about the decisions of state court judges under the guise of a Section 1983 action. Federal courts, however, are not a forum for appealing state court decisions. (Citations omitted).

Petitioner's first issue - whether she was denied substantive and procedural due process of law when she was not allowed to make a bid on homestead property and was not allowed an opportunity to redeem - was fully addressed by the trial court at pages 4-5 of its order. The trial court specifically pointed out that

> ... all of plaintiff's allegations which rely on the status of a judge to satisfy the 'under color of state law' requirement depend solely on conclusory statements that there was a conspiracy. The law in the Eleventh Circuit is that '[t]he naked assertion of a conspiracy between a state judge and private defendants without supporting operative facts provides an insufficient state action nexus for a Section 1983 action.'

(Citations omitted).

Further on page 6, the court stated,

> The third amended complaint therefore is devoid of allegations of fact showing an agreement and concerted action among the Defendants and the judges named in the Complaint.

> There are simply no operative facts, merely a naked assertion by the Plaintiff in her pleading, that a conspiracy existed. . . .

The trial court noted this continued lack of evidence from Petitioner even though Petitioner had sufficient opportunity to gather evidentiary support for her claims. (Emphasis added). And finally as to the §1983 matters, the court stated,

> . . . Defendants have carried their burden of demonstrating that there are no genuine issues of material fact that necessitate a trial, and plaintiff has failed to offer any proof of a conspiracy involving a judge. Having failed to provide an essential element of her case, summary judgment is appropriate on plaintiff's claim of a conspiracy involving state court judges in violation of 42 USC §1983. (Order at page 8).

As to the actual notice of sale, the trial court specifically found the published notice was not inadequate. The trial court recognized that Petitioner

was active in attempting to stop the sale on her behalf and in fact attended the sale. Order at p. 12.

Petitioner also claims she was denied equal protection under the law by not being allowed to claim homestead exemption on her property interest in the former marital residence of the parties. The Petitioner claims that Respondents operated together to defeat and deprive the Petitioner of her homestead in violation of 42 U.S.C. §1985(3). To put it simply, the trial court found that

> Not only does Plaintiff's Complaint fail to plead facts to support a conspiracy in violation of 42 U.S.C. §1985(3), making a motion to dismiss appropriate, but also there are no evidentiary facts of record to support such contention. (Order at page 16).

The court noted that the defendants were merely participating in a sheriff sale that was

> the result of a lien placed on

> Plaintiff's interest in realty by Tanya Plaut and an order of a state trial court for foreclosure of such lien. There is no evidence of a plot to initiate and consummate the sale in an improper manner, unauthorized by law, to deprive Plaintiff of her property. Participation in a public sale does not constitute evidence of a conspiracy in violation of 42 U.S.C. §1985(3). (Order at page 17).

Further, the trial court found that Petitioner did not state an independent claim for denial of equal protection under 42 U.S.C. §1985(3) and summary judgment for Respondents was entered on Petitioner's claim that Respondents had denied her constitutional right to own and hold homestead property. Order at pp. 18 and 19. The trial court pointed out that the Florida Homestead provision on which the plaintiff relied prior to the date of sale of the property only applied to property "owned by the head of a family." The trial court noted that such a provision did not discriminate on

the basis of gender. (Order at page 18). Citing Califano v. Goldfarb, 430 U.S. 199 (1977) and Holden v. State of Gardner, 420 So.2d 1082 (Fla. 1982). The court pointed out that Petitioner did not allege or contend that she was ever responsible for the welfare of another while she resided on the subject property.

The court also fully dealt with Petitioner's claim that she was denied her right to substantive due process when excessive force was allegedly used against her in the execution of a state and enforceable writs ordered. In particular, the court stated that there was no evidence that the defendants Young or Giles, Hedrick, Robinson conspired with the sheriff's deputies to deprive her of rights secured under 42 U.S.C. §1983. The court indicated that plaintiff was merely relying on conclusory allegations

in the third amended complaint. Order at p. 9 and 10. Clearly, Petitioner is attempting to rehash before this Court matters originally decided in divorce proceedings between Petitioner and Respondent, Donald Simpson. The state appellate process was available to Petitioner to question any decision of the state court. However, Petitioner chose to file a suit in Federal Court, Middle District, Orlando, making various unsupported claims against professional defendants. The trial court, giving Petitioner every benefit of the doubt, found that Petitioner's claims were unsupported by the record evidence. That decision was affirmed per curiam by the 11th Circuit Court of Appeals. Petitioner has no basis for seeking a writ of certiorari to this Court. Premised on the jurisdictional requirements alone, Respondents respectfully submit that Petitioner's

writ of certiorari should be denied. Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70, 75 S.Ct. 614 (1955).

STATEMENT OF THE CASE

Respondents respectfully disagree with the Statement of the Case as stated by Petitioner and, in clarification, states as follows:

The parties herein will be referred to as they appear before this Court, i.e. Petitioner, Respondent, Respondents or by their respective names.

The Petitioner, Eleanor S. Simpson, and Respondent, Donald Simpson, were divorced on May 24, 1983 in the Circuit Court, in and for Orange County, Florida. (R5-162). Petitioner had numerous attorneys during the course of the divorce proceedings. Mr. Simpson's attorney was Respondent, Terry Young.

The Final Judgment (of Dissolution of Marriage) was entered by Judge William C.

Gridley and provided, inter alia, that Mr. Simpson receive certain personal effects and that the marital home be partitioned equally. (R5-162). Petitioner appealed the Final Judgment, but the Fifth District Court of Appeal per curiam affirmed the Final Judgment on January 31, 1984, and denied rehearing on May 29, 1984. (R5-162).

Petitioner failed to comply with the partition of personal property as stated in the Final Judgment, whereupon on or about August 19, 1983, upon motion of Respondent, Donald Simpson, Judge Gridley entered an Order of Division of Personal Property authorizing the Clerk to issue a Writ of Attachment for the personal property of Mr. Simpson. (R5-162). Subsequently, Mr. Simpson moved the Court to permit the Sheriff's Forcible Entry During Recovery of Personal Property. (R5-162). The Court entered an Order

Granting Permission for Sheriff's Forcible Entry During Recovery of Personal Property on October 4, 1983, after a hearing duly noticed. (R5-162). Simpson interfered with the Respondent, Lawson Lamar's (Sheriff's) execution of said Order and was arrested on or about October 6, 1983.

Respondent Tanya Plaut was one of the attorneys who had represented Petitioner in her dissolution proceedings. Subsequent to the dissolution of marriage, Tanya Plaut filed an action against Eleanor S. Simpson for unpaid attorney's fees. After trial of the issue at which the Petitioner was represented by counsel, a judgment for the fees was entered in the case of Plaut v. Simpson, CI-83-4444, Circuit Court in and for Orange County, Florida. That judgment went unpaid and subsequently, Respondent Plaut executed and levied on Mrs. Simpson's

one-half interest in the marital home to satisfy said judgment. (R5-162). Upon a duly noticed Sheriff's Sale, Mrs. Simpson's one-half interest in the marital home was purchased by Respondent, Donald Simpson. Despite Mrs. Simpson's knowledge of the impending sale, she neglected to timely appear at the Sheriff's Sale to protect her interest. Petitioner admitted she received previous notice of the scheduled Sheriff's Sale of her one-half interest in her marital home. (R5-162; R4-102). In fact, Petitioner prior to the sale sought to prevent the sale by emergency motion, which motion was denied. (R4-102). Petitioner's testimony establishes that she knew that sale was to take place between the hours of 11:00 a.m. and 2:00 p.m., but operated under her own conclusion that the sale "couldn't go through because the court's ruling was incorrect." (R5-162). Respondent,

Donald Simpson did appear and purchased Mrs. Simpson's one-half interest in the marital residence for the amount of Respondent Plaut's judgment, approximately $8,013.87.

Subsequent to the purchase by Respondent Donald Simpson the property was listed with a realtor, Respondent Minnie Bridges, and sold.

Petitioner filed an action in federal court in April of 1985. As noted in the order of July 10, 1989 of the United States District Court, Middle District of Florida, dismissing Petitioner's Third Amended Complaint and granting summary judgment in favor of Respondents Terry Young, Giles, Hedrick & Robinson, P.A. in total and Respondents Simpson and Lawson Lamar in part, Petitioner had ample opportunity to pursue her action in the lower court through discovery, which was extended on numerous times. (R6-194-7).

As further noted by the Middle District Court in its order, Petitioner' entire action was based on the conclusory statements of Petitioner Simpson.

I.

THE SALE BY SHERIFF OF PETITIONER'S HALF INTEREST IN HER FORMER MARITAL RESIDENCE WAS CONDUCTED PURSUANT TO A CONSTITUTIONAL STATE STATUTE AND DID NOT DENY HER SUBSTANTIVE NOR PROCEDURAL DUE PROCESS.

In her complaint Petitioner asserted that the state statute pursuant to which the forced sale of her half-interest in the marital home was conducted, Florida Statute 56.22 (1983), is unconstitutional. (R4-102) She complains that the operation of that statute unconstitutionally deprived her of her right to procedural due process. She claims that the statute is void for vagueness due to its provision that the "sale shall take place between the hours of 11:00 A.M. and 2:00 P.M." Petitioner suggests that the statute did not give her notice of the

exact time of the sale, and therefore the statute is unconstitutional. Petitioner does not claim that she did not receive notice of the sale or that the sale occurred outside the times specified. Rather, she simply alleges that the statute is unconstitutional and the sale void because she was not given a particularized time between the hours of 11:00 A.M. and 2:00 P.M. for the sale.

As the trial court correctly noted in the Order of July 10, 1989, (R6-194) the unrefuted facts of the record show that the sale was conducted pursuant to a lien placed on Petitioner's half-interest in the marital home by her former attorney, Defendant Plaut. Respondent Donald Simpson took advantage of the procedure provided by law and appeared at the designated time and place set forth in the Notice of Sheriff's Sale to bid on the property. Petitioner had the same

opportunity to appear at the designated time to bid on the property. Petitioner admitted that she failed to be timely present at the sale of the home as had been scheduled by the Notice of Sheriff's Sale "due to a misunderstanding" and because she was stuck on the telephone. (First Amended Complaint, par. 11(I).) (Deposition of Petitioner 11/24/86, pages. 98-101)

Prior to the date of sale Petitioner was aware of the fact that a Notice of Sheriff's Sale had been published in the newspaper which announced that the sale would take place between the hours of 11:00 A.M. and 2:00 P.M. on a particular day. (Deposition of Petitioner 1/15/87, pg. 108) In fact, Petitioner had been active, albeit unsuccessfully, in attempting to stop the sale of her one-half interest in the realty. (Deposition of Petitioner 1/15/87, pg. 107).

The fact that Florida Statute 56.22 gives some latitude as to the specific timing of the sale does not make the statute unconstitutionally vague. See Ohio Realty Investment Corp. v. Southern Bank of West Palm Beach, 300 So.2d 679 at n. 1 (Fla. 1974); State, Ex Rel. Rauler-son v. Sloan, 194 So. 128 (Fla. 1938). Nowhere in the Third Amended Complaint is it alleged that the Sheriff's sale conducted on April 30, 1984, did not comport with Florida Statute 56.22.

As a basis for Petitioner's contention that Florida Statute 56.22 is unconstitutional, she compares its contents to Florida Statute 45.031. Those two statutes deal with different types of sales -- one deals with judicial sales while the other deals with execution sales. In fact, subsection (8) of Florida Statute 45.031 specifically states that the statute does not apply to

property sold under executions. Further the requirement in 45.031 that the notice of a judicial sale contain "the time and place of sale" is not inconsistent with a notice which states that the sale shall take place "between the hours of 11:00 A.M. and 2:00 P.M." The constitutional validity of one statute is not to be determined by the contents of another statute.

In selling Petitioner's interest in the property, the Sheriff was simply enforcing a judgment and Writ of Execution issued thereon by a circuit court judge. In making the sale, the Office of Lawson Lamar acted in an administerial capacity. Florida Statute 30.30 expressly provides that a sheriff is not to be held liable for wrongful levy when it is made as required by statute or pursuant to the specific order of a court of competent jurisdiction. A sheriff is

required by statute to execute all writs directed to him to be executed in his county. Florida Statute 30.15(2). He is justified in the execution of a writ regular on its face and issued by competent authority. Camp v. Mosely, 2 Fla. 171 (Fla. 1848).

In her Third Amended Complaint Petitioner has not suggested that the judgment nor Writ of Execution issued thereon appeared invalid or irregular on their face. With respect to the conduct of a sale, a presumption exists that the sheriff complied with the requirements of the law and that the sale was regular in all respects. The burden is on the Petitioner to demonstrate otherwise. Arlt v. Buchanan, 190 So.2d 575 (Fla. 1966). In this case Petitioner has presented no facts indicating that the sale was conducted in an irregular fashion and not in accordance with Florida

Statutes.

Petitioner suggests that an inadequate purchase price received for her half-interest in the marital home provides a sufficient basis for setting aside the sale. First, it should be pointed out that monies received from the sale are not clearly inadequate given that what was being purchased was a half-interest in a home. Second, case law is clear that an inadequate purchase price alone is insufficient basis for setting aside a sheriff's sale. McAlice v. Anderson, 403 So.2d 563 (Fla. 3rd DCA 1981). Finally, Petitioner's suggestion that the sale should be set aside as the result of an inadequate purchase price having been received from the sale raises no federal constitutional issues which would justify the exercise of jurisdiction over Petitioner's claims.

As a general rule, relief against

mere irregularities in an execution (if, in fact, they did exist) must be sought in the original cause, and not in a new and independent proceeding. Ryan's Furniture Exchange, Inc. v. McNair, 162 So. 483 (Fla. 1935). The State of Florida itself provides procedures through which a "homestead owner" can prevent a forced sale and further provides an adequate remedy to "homestead owners" who have lost their home through a forced sale. See Florida Statute Chapter 222. Although the statutes in Chapter 222 may not provided Petitioner with all the relief which may be available to her under 42 U.S.C. 1983, they could have fully compensated her for the property loss allegedly sustained. Said available remedies are sufficient to satisfy the requirements of due process. Parratt v. Taylor, 451 U.S. 527 (1981).

Petitioner alleges that Sgt. Tranium

of the Office of the Orange County Sheriff denied her a constitutionally required opportunity to redeem her property subsequent to the Sheriff's sale. Petitioner fails to cite to any particular source of this alleged right. In truth, there exists no legal right (constitutionally or otherwise) to redeem property following such a sale.

It would appear that the Petitioner has confused a Sheriff's sale with a mortgage foreclosure wherein under certain circumstances there does exist an opportunity to redeem one's interest in property which has been foreclosed upon. Petitioner's Third Amended Complaint fails to demonstrate how any denial of a right to redemption following a Sheriff's sale constitutes a violation of Petitioner's constitutional rights to procedural due process or equal protection as Petitioner seems to be asserting in paragraph

44 of the Third Amended Complaint. In a lower court Order dated October 25, 1985, the court, on page 8, paragraph 1, rejected Petitioner's contention that she was constitutionally required an opportunity to redeem the property pursuant to the issuance of a deed by the Sheriff. The court ordered that paragraph 13 of the original Complaint alleging the existence of such a constitutional right be stricken. Unfortunately in her Second and Third Amended Complaints Petitioner merely moved the allegations of former par. 13 to other numbered paragraphs.

It should not be overlooked that Petitioner did not assert the unconstitutionality of Florida Statute 56.22 at any time in the state court dissolution of marriage proceedings where Petitioner sought to prevent the sale from taking place and later sought to have the sale set aside. In those pro-

ceedings Petitioner advanced other arguments as to why the sale should not have taken place. In Almon v. Sandlin, 603 F.2d 503 (5th Cir. 1979), the Fifth Circuit Court of Appeals held that if a Petitioner does not assert the unconstitutionality of a state statute in the state proceedings, he has waived his unconstitutionality claim.[1] Respondents therefore assert that this Court may not now properly consider whether Florida Statute 56.22 is unconstitutional as asserted by Petitioner.

Respondents further assert that Petitioner's claims attacking the constitutionality of Florida constitutional provisions and statutes are barred by the doctrines of res judicata and/or

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1. In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) the Eleventh Circuit adopted as binding precedent all decisions of the Fifth Circuit rendered prior to 10/1/81.

collateral estoppel. Petitioner submits that the Sheriff's sale of April 30, 1984, should be set aside as the Notice of Sheriff's Sale is unconstitutionally vague and because the homestead exemption provision of Article X, Section 4 of Florida's Constitution (which was in effect at the time of the sale) unconstitutionally discriminated against single women who were not the head of a family. In several prior judicial proceedings in Florida state courts Petitioner sought to have the Sheriff's sale of April 30, 1984, set aside. After having received notice of the sale, but prior to it taking place, Petitioner filed an emergency motion in the Circuit Court in and for Orange County, Florida, (Case No. CI-83-4144) seeking to prevent the scheduled sale from taking place. (Par. 41(L), Third Amended Complaint (R4-102) and Exhibit "D" attached thereto.) Said

motion was denied on April 26, 1984. (Exhibit "BB" of Third Amended Complaint.) Subsequent to the sale Petitioner filed a notice to vacate the Sheriff's sale of April 30, 1984. (Pars. 41(N), 57 and 58 and Exhibit "II" of Third Amended Complaint.) Petitioner's motion to vacate the sale was denied on June 13, 1984. (Exhibit "JJ" to Third Amended Complaint.)

Following the denial of her motion to vacate the Sheriff's sale, Petitioner filed appellate proceedings in the Fifth District Court of Appeal, State of Florida (Case No. 84-959) where she again attacked the validity of this sale and sought to have it set aside. The Fifth District Court of Appeal for the State of Florida dismissed Petitioner's appeal. (See Count V of Petitioner's original Complaint filed in this action.) Thus it is clear that Petitioner, in several

previous court proceedings, unsuccessfully attempted to have the Sheriff's sale declared invalid and set aside. Petitioner is therefore barred by the doctrines of res judicata and/or collateral estoppel to now present such claims attacking the validity of the sale.

Generally the doctrine of res judicata bars subsequent litigation where there is an identity of the things sued for, an identity of action, identity of persons and parties to the action, and an identify of the quality or capacity of the person for or against whom the claim is made. Amey, Inc. v. Gulf Abstract & Title, Inc., 758 F.2d 1486 (11th Cir. 1985). However, the bar of res judicata extends not only to the precise legal theory presented in the previous litigation, but rather to all legal theories and claims arising out of the same operative nucleus of facts. Olmsted v. Aamco

Oil Company, 725 F.2d 627 (11th Cir. 1984), reh. den. 731 F.2d 891; First Alabama Bank of Montgomery, N.A. v. Parsons Steel, Inc., 747 F.2d 1367 (11th Cir. 1984). The principle of res judicata bars relitigation of the same claim even where a new theory is advanced as the basis for relief in a second suit. United States v. Stewart, 689 F.2d 759 (8th Cir. 1982), cert. den. 103 S.Ct. 1427, 460 U.S. 1037, 75 L.Ed.2d 788. A second action advancing a different legal theory than was presented in the first action, but which is based upon the same events and injuries is barred by a final decision in the first action where that theory could have been argued as an alternative or an additional ground for recovery. Bushman v. Safeway Stores, Inc., 608 F.Supp. 232 (D.C. Nev. 1985); John Alden Life Insurance Company v. Cavendes, 591 F.Supp. 362 (S.D. Fla.

1984). A plaintiff must take advantage of an opportunity to assert all theories against a defendant upon which she might recover; a plaintiff should not be allowed to litigate in a subsequent action that which could have been advanced previously. Bushman v. Safeway Stores, Inc., supra. A final judgment is conclusive not only as to the claims adjudicated, but also as to claims which could have been adjudicated. Hence, where a judgment on the merits is rendered in favor of a defendant the plaintiff may not bring a second suit based on the same cause of action but seeking recovery on a different theory. Herendeen v. Champion International Corp., 525 F.2d 130 (2nd Cir. 1975). A comparison of Petitioner's attack on the validity and constitutionality of the Sheriff's sale made in the Federal District Court with the above-described previous state court proceed-

ings leaves no doubt that the Petitioner's state court allegations and the federal case were predicated upon the same occurrences, events and set of facts. Though it is true that the Third Amended Complaint filed by Petitioner describes the facts surrounding the Sheriff's sale in greater detail than would appear in the previous state court proceedings, this does not avoid the proper application of the doctrine of res judicata to bar Petitioner's present pursuit seeking to have the sale set aside. Rosenthal v. State of Nevada, 514 F.Supp. 907 (D.C. Nev. 1981).

The lower court rejected the mutuality of parties requirement as an essential element for the application of collateral estoppel. Hann v. Carson, 461 F.Supp. 854 (M.D. Fla. 1978). The elimination of the mutuality requirement for collateral estoppel is based upon the view that once

a party has had a full and fair opportunity to litigate a question, he ought not to be permitted a second opportunity to litigate the same question in the later case simply because he has a different adversary. Hann v. Carson, supra. Other federal courts have also stated that a litigant may assert collateral estoppel even though he was not a party to a prior suit. Cotton States Mutual Insurance Company v. Anderson, 749 F.2d 663 (11th Cir. 1984); Matter of Raiford, 695 F.2d 521 (11th Cir. 1983).

Though, as indicated above, a mutuality of parties is no longer a requirement for the application of the doctrine of collateral estoppel, here we really are dealing with a mutuality of parties even though the Sheriff, Lawson Lamar, was not named as a defendant in the prior state court proceedings. The described state court proceedings sought to prevent a

sale by the Sheriff from taking place and further sought to vacate a sale conducted by the Sheriff and the issuance of a Sheriff's Deed to Mrs. Simpson's half-interest in certain real property. Though perhaps not named as a defendant, the Sheriff is a "silent" party and perhaps may even be described as a real party in interest in proceedings attacking the validity of a Sheriff's sale. All of the "identities" needed for the application of the doctrines of res judicata and/or collateral estoppel are present in this case. Petitioner should not be allowed to relitigate a claim which was previously considered and resolved by Florida State Courts.

In the case of Billingsley v. Seibels, 433 F.Supp. 1 (N.D. Ala. 1976), plaintiffs attacked the validity of a deed which conveyed real property that was foreclosed at a public improvement

sale. Claims were made in the State court that the real estate transfer was void under 42 U.S.C. 1983 and the due process clause of the Fourteenth Amendment. The Alabama Supreme Court determined that the deed was valid. The plaintiffs then filed another civil rights action in which they sought to have the deed declared invalid in the Federal court. The Federal court action involved the same real estate and many of the same parties, though not all of the same parties. The Federal court found that the judgment entered in the Alabama court barred relitigation between the original parties of the matter adjudicated therein. However, the court went on to find that the doctrine of collateral estoppel could properly be asserted by other defendants named in the Federal court action even though they were not parties to the State court action.

In this case, even though Sheriff Lawson Lamar was not specifically named as a party to the State court proceedings, he may properly invoke the doctrine of collateral estoppel and/or res judicata which would prevent a relitigation of claims that Florida Statute 56.22 and Article X, Section 4 of the Florida Constitution of the State of Florida are unconstitutional.

II.

THE PETITIONER WAS NOT PRECLUDED FROM MAKING A BID ON HER FORMER MARITAL RESIDENCE AND WAS NOT DENIED SUBSTANTIVE DUE PROCESS WHEN SHE WAS NOT ALLOWED AN OPPORTUNITY TO REDEEM PRIOR TO FINAL DEPRIVATION OF HER PROPERTY.

Question Two is merely a reargument of the same question presented to the Eleventh Circuit Court of Appeals. No new authority is cited by Petitioner.

The trial court did not err in ruling that Petitioner failed to state a cause of action for denial of equal protection

based upon Petitioner's claim for homestead exemption of her half-interest in a former marital residence.

In Count V of the Third Amended Complaint, Petitioner sued Respondents SIMPSON, YOUNG, GILES, HEDRICK & ROBINSON, P.A., PLAUT and LAMAR, and alleged that she had been denied her constitutional right to own and hold homestead property because "the Florida constitutional provision in effect at the time of the forced sale of her homestead disallowed the forced sale of homestead of married or single persons, but not for single women who were heads of their own household..." (R4-102-39).

Petitioner alleged that she had been denied equal protection of the laws guaranteed to her by Title 42, U.S.C. Section 1983 and, further, had been discriminated against on the basis of her sex and on the basis of her being a

single head of her own family unit, in violation of 42, U.S.C. Section 1985(3). (R-102-39).

Article X, Section 4A of the Florida Constitution, in effect in April of 1984, provided that the Florida homestead provision applied to property "owned by the head of a family". "Head of a family" is defined as applying to those who are responsible, either legally or morally, for the welfare of someone else and is based upon being able to establish "support obligations". Edward Leasing Corp. v. Uhlig, 652 F.Supp. 1409 (S.D. Fla. 1987); In Re: Shorr's Estate, 409 So.2d 487 (Fla. 4th DCA 1982); Flannery v. Green, 482 So.2d 400 (Fla. 2d DCA 1986).

In the trial court ruling, the court found that the Florida homestead provision did not discriminate on the basis of gender, which might have stated a claim

under 42 U.S.C. Section 1985(3) (R6-194), citing Califano v. Goldfarb, supra and Holden v. Estate of Gardner, 420 So.2d 1082 (Fla. 1982)). In Holden, supra, the court specifically found that the presumption that a husband is the head of family was abrogated by the 1971 amendment to Section 61.09, Florida Statutes. Section 61.09 of the Florida Statutes placed a duty of support on both spouses and has been construed as abrogating the presumption that the husband is the head of family, citing Cory v. Parks, 386 So.2d 292 (Fla. 2d DCA 1980). Id. at 1085. Holden, supra, concluded that the head of the family may be either the husband or the wife.

Additionally, Florida law has held that there can be only one head of family and no presumption of headship goes to the husband. In Re: Estate of Melisi, 440 So.2d 584 (Fla. 4th DCA 1983); see

also Nationwide Financial Corp. of Colorado v. Thompson, 400 So.2d 559 (Fla. 1st DCA 1981).

Petitioner argues that the November 1984 amendment to Article X of the Florida Constitution has some bearing on this case. The amendment of Article X of the Florida Constitution had nothing to do with correcting any class-based discrimination. The 1984 amendment changed the term "head of family" to "a natural person".

> The amendment thus expanded the class of persons who can take advantage of the homestead provision and its protections.... As representative Hawkins, who sponsored the amendment in the House of Representatives, explained, the purpose of the revision was 'to give protection against forced sale for the homestead of a single person, a divorced person, any person who has a homestead, rather than just a head of a family.' House Judiciary Full Committee Meeting, March 29, 1983. Public Health Trust of Dade County v. Lopez, 531 So.2d 946 (Fla. 1988).

The Third Amended Complaint clearly attempted to state a cause of action for discrimination based on sex. Under no stretch of the facts or the law, would the application of Article X, Section 4 result in sexual discrimination.

Petitioner states that she has shown sufficient facts to demonstrate the motivation from which a jury could reasonable infer the existence of a conspiracy in violation of Title 42, U.S.C. §1985(3).

In order to recover under 42 U.S.C. 1985(3) the Petitioner must prove: (1) a conspiracy, (2) to deprive, directly or indirectly, any person or class of persons of equal protection or a privilege of immunity protected by law; (3) that the conspirators committed some act in furtherance of the conspiracy; and (4) that the Petitioner was "injured in his person or his property" or was

"deprived of having and exercising any right or privilege of a citizen of the United States." Griffin v. Breckenridge, 403 U.S. 88, 103-104 (1971).

Thus, under either Section 1983 or Section 1985(3) it is essential to Petitioner's claim that she be able to plead and prove a conspiracy between the Respondents. The District Court has ruled that Petitioner has done neither. Petitioner's allegations of conspiracy are conclusory and are not supported by any evidence.

Count VII essentially is a restatement of the allegations of Count II regarding the sale of the Petitioner's one-half interest in the former marital residence. This time, instead of being brought under Title 42 U.S.C. Section 1983, the allegations are made under 42 U.S.C. Section 1985. Again, broad allegations of conspiracy are made against

Respondents. It is Petitioner's contention that Respondents owed the Petitioner various duties, none of which are supported by the facts or the law. Obviously, the interests of Respondents Terry Young and Donald Simpson were completely adverse to those of Petitioner. Further, the District Court's granting summary judgment was correct given the absence of any genuine issue of material fact that the Respondents were, at all times, acting in accordance with and pursuant to valid legal process.

In order to withstand a Motion to Dismiss, the Petitioner must assert at least minimum support for the existence of a conspiracy. Robinson v. McCorkle, supra. It is necessary that the complaint state more than allegations of deprivation of constitutional rights. Id. at 113. Petitioner is not entitled to pursue an action merely because she

believes, without factual support, that a conspiracy existed.

The District Court properly found that Petitioner did not state a cause of action for denial of equal protection under either 42 U.S.C. Section 1983 or 42 U.S.C. Section 1985(3) and further properly granted the motions for summary judgment as to Count V of the Third Amended Complaint.

III.

THE TRIAL COURT DID NOT ERR IN DISMISSING WITH PREJUDICE AND GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT ON PETITIONER'S CLAIMS PREDICATED UPON ALLEGATIONS OF UNLAWFUL ARREST AND EXCESSIVE USE OF FORCE.

A. RESPONDENT LAMAR WAS PROPERLY GRANTED A SUMMARY JUDGMENT ON PETITIONER'S 1983 AND 1985 CLAIMS OF UNLAWFUL ARREST AS PETITIONER CONCEDED SHE HAD NO EVIDENCE TO ESTABLISH THAT THE ALLEGED EXCESSIVE USE OF FORCE WAS THE RESULT OF AN OFFICIAL POLICY, STATUTE, ORDINANCE, REGULATION OR CUSTOM OF THE SHERIFF.

In Counts IV and V of her Third Amended Complaint (R4-102) Petitioner incorporates by reference Count I which

includes the allegation that a deputy sheriff used excessive force in arresting Petitioner during a court-ordered forcible entry of the Simpsons' house. The deputy sheriff who effected the arrest of Petitioner was Edward J. Noyes. Petitioner has not sued Deputy Noyes. She did, however, include as a defendant in her lawsuit the Sheriff of Orange County, Florida, Lawson Lamar. Sheriff Lamar is sued in his official capacity. No allegation is made that Respondent Lamar was present at the time of Petitioner's arrest; neither is there any allegation of Lamar having personally participated in the arrest.[2] As the trial court judge

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2. Petitioner states at pages 52-53 of her brief that only one deputy sheriff was present at the time of her arrest and that such constitutes a violation of a policy of the Orange County Sheriff's Office which requires using two deputies

correctly pointed out to Petitioner in her Order of July 10, 1989, Petitioner must demonstrate that the constitutional deprivation was the result of a governmental custom, policy, ordinance, regulation or decision officially adopted or promulgated by the Office of the Sheriff if she is to recover against Lamar for the actions of Deputy Noyes. (R 6-194; Id.. at 690-691). In order to prevail upon her claims of unlawful arrest and the use of excessive force during that arrest Petitioner would have to demonstrate a causal link between an official policy, ordinance, practice or

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for domestic disputes. No citation to the record on appeal in support of such statement is made. Respondent Lamar respectfully submits that these facts and the policies of the Office of the Sheriff as described by Petitioner are incorrect.

custom and her injuries. Byrd v. Clark, 783 F.2d 1002, 1008 (11th Cir. 1986).

In Lamar's supplement to his Motion For Summary Judgment (R7-201) the Sheriff sought summary judgment on Counts IV and V of Petitioner's Third Amended Complaint. Lamar asserted that summary judgment was warranted as the affidavits submitted in support of his supplement indicate that the deputy sheriff who arrested Petitioner during the forcible entry of the Simpson house did not use excessive force and that any alleged use of excessive force during the arrest was not pursuant to a custom, policy, ordinance or decision adopted and promulgated by the Office of the Sheriff. A response filed by Petitioner attached an affidavit of a person who was allegedly present during the arrest, Mary Pruitt. (R7-208) In that affidavit Ms. Pruitt suggests that excessive force was used upon Peti-

tioner by the arresting officer. Simpson asserted to the trial court judge that the affidavit of Pruitt presents conflicting evidence during the deputy sheriff's behavior which creates a genuine issue of material fact sufficient to withstand the Motion For Summary Judgment filed by Defendant Lamar. However, in her response to Lamar's supplement to his Motion For Summary Judgment Petitioner "concedes that she has no evidence that [the deputy sheriff's alleged use of excessive force] resulted from a policy of the Sheriff of Orange County..." (R7-208).

In Celotex Corp v. Catrett, 477 U.S. 317, 323 (1986) the United States Supreme Court determined that summary judgment is appropriate against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party

will bear the burden of proof at trial. The court has further explained "that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported Motion For Summary Judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986) (emphasis in original). The lower court judge correctly found that though there may be a dispute over whether excessive force was used, this is not sufficient to withstand a Motion For Summary Judgment when there is no evidence to establish the existence of an element essential to her case, i.e., that the alleged excessive use of force was the result of an official policy, statute, ordinance, regulation, custom or usage. See Brown v. City of Clewiston, 848 F.2d 1534, 1537

(11th Cir. 1988).[3]

B. RESPONDENTS WERE PROPERLY GRANTED A SUMMARY JUDGMENT ON PETITIONER'S PENDENT STATE LAW CLAIM OF FALSE ARREST AS THE UNDISPUTED EVIDENCE DEMONSTRATED THAT THERE WAS PROBABLE AND LAWFUL CAUSE FOR THE ARREST.

In Count VIII of her Third Amended Complaint Petitioner sued Respondents Donald Simpson, Terry Young, Giles,

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3. Affidavits of the arresting officer, Edward J. Noyes, and of Defendant Lawson Lamar were attached to Defendant Lawson Lamar's Supplement To Motion For Summary Judgment. (R7-201) Both of those affidavits reflected that the Office of the Orange County Sheriff did not have a policy, procedure, practice or custom (official or unofficial) which permitted employees or appointees of the Sheriff to use excessive, unreasonable or unnecessary force in the arrest and/or detention of persons. The Sheriff's policies, customs, rules and regulations prohibited a deputy from using excessive, unnecessary or unreasonable force when arresting or detaining a person. The affidavits further reflect that all deputy sheriffs such as Deputy Noyes had received instruction on the policies of the Office of the Sheriff. Deputies further received from the Office of the Sheriff instructions on the protection of an arrestee's constitutional and civil rights.

Hedrick & Robinson, P.A. and Lawson Lamar for the allegedly false arrest of her on or about October 6, 1983. Petitioner sought to have the lower court exercise its pendent jurisdiction over such claim. The trial court exercised its discretionary jurisdiction over Petitioner's false arrest claim. In her order of July 10, 1989, United States District Court Judge Patricia C. Fawsett concluded that the Respondents were entitled to the entry of a summary judgment in their favor on Count VIII of the Third Amended Complaint. This ruling of the trial court judge was correct.

The unrefuted facts of record show that the Sheriff's Office in entering Petitioner's home acted pursuant to a State Court Order which granted permission for forcible entry of the home during Respondent Donald Simpson's recovery of his personal property kept there.

(Deposition of Petitioner 9/29/86, pg. 74; 5/2/86, pg. 102) The State Court Order was granted after a hearing which Petitioner attended. The Court Order also specifically gave the Sheriff authority to arrest any person who interfered with the execution of the Order. (Deposition of Petitioner 5/2/86, pg. 103). In her Third Amended Complaint Petitioner acknowledges that she protested the taking of some items of personal property prior to her being arrested. She has stated that she objected to the seizure of the items during the entry. (Deposition of Petitioner 9/29/86, pg. 87). Petitioner further admitted during a deposition that she had resisted arrest. (Deposition of Petitioner 9/29/86, pg. 104).

There can be no doubt but that there was probable cause for the deputy sheriff to arrest Petitioner. The trial court

judge properly found that there was no evidence of record to show that Petitioner had been falsely arrested. The Sheriff's deputy was executing a State Court Order when he went to the house and ultimately arrested Petitioner. Respondents Donald Simpson and Terry Young of Giles, Hedrick & Robinson, P.A. were merely pursuing legal means as adversaries to Petitioner in a legal proceeding to recover Donald Simpson's property. The trial court judge correctly observed that:

> In essence, plaintiff is complaining about state court orders which divided the marital estate and gave Defendant [Donald] Simpson the right and means to recover his property. Based on the unrefuted facts of record, summary judgment as to Count VIII is granted in favor of Defendants.

IV.

THE TRIAL COURT DID NOT ERR WHEN IT HELD THAT PETITIONER FAILED TO ADEQUATELY PLEAD OR PROVE A CONSPIRACY BECAUSE THE "UNDER COLOR OF STATE LAW" REQUIREMENT OF U.S.C. §1983 HAD NOT BEEN MET.

Petitioner seeks recovery under 42 U.S.C. Section 1983. In order to recover under 42 U.S.C. Section 1983, Petitioner must first prove that Respondents have deprived her of rights secured under the constitution and laws of the United States. Secondly, she must show that the Respondents acted "under color of law." Adickes v. S. H. Kress & Company, 398 U.S. 144, (1970). This requires Petitioner to demonstrate that there was a state actor or that those Respondents who are private individuals conspired with a state actor. See Dennis v. Sparks, 449 U.S. 24, 27-29 (1980). Private citizens cannot be liable under Section 1983 unless they and a public official "acted with a common understanding" or "meeting

of the minds" to deprive the Petitioner of her constitutionally protected rights. Hassell v. City of Philadelphia, 507 F.Supp. 814, 818, (E.D. PA 1981) quoting, Augenti v. Cappellini, 84 F.R.D. 73, 77 (N.D. PA. 1979).

Thus, under Section 1983 it is essential to Petitioner's claim that she be able to plead and prove a conspiracy between the Respondents. The District Court has ruled that Petitioner has done neither. Petitioner's allegations of conspiracy are conclusory and are not supported by any evidence.

Petitioner's Third Amended Complaint is replete with allegations of conspiracy between Respondents and various state court judges. The Petitioner is relying on such allegations to provide the "under color of state law" connection necessary for an action under 42 U.S.C. Section 1983. All of Petitioner's allegations in

that regard depend solely on conclusory statements that there was a conspiracy. This does not comport with the requirements for stating a cause of action under 42 U.S.C. Section 1983. "The naked assertion of a conspiracy between a state judge and private defendants without supporting operative facts provides an insufficient state action nexus for a Section 1983 action." Phillips v. Mashburn, 746 F.2d. 782, 785 (11th Cir. 1984).

A review of the Third Amended Complaint and its voluminous attachments makes it clear that the Petitioner has been afforded ample opportunity to seek redress of her grievances. The instant action which seeks to state a claim under the Civil Rights Act is an obvious attempt to use the Federal Court system to obtain a more favorable result than that obtained in state court. In fact, Ms.

Simpson now seeks collateral review of the state court proceedings. In short, this proceeding is nothing more than a complaint about the decision of state court judges under the guise of a Section 1983 action. Federal Courts, however, are not a forum for appealing state court decisions. Staley v. Ledbetter, 837 F.2d. 1016, 1018 (11th Cir. 1988).

Petitioner cannot establish a prima facia case to support her allegations. She is unhappy with the result of her dissolution of marriage action and has worked backwards from that result to spin a web of allegations supported by nothing more than innuendo, conjecture, and assumptions. As the Supreme Court observed in Dennis v. Sparks, supra: "Merely resorting to the courts and being on the winning side of a lawsuit does not make a party a co-conspirator with the judge."

Paragraph 12, of Count I of Petitioner's Third Amended Complaint alleges that Petitioner's federal constitutional right to be heard by an impartial judge was deprived by "obtaining the recusal of the original circuit judge, Richard B. Cooper, and the reassignment of the original divorce action to William C. Gridley." This allegation suggests that Petitioner desired to have her dissolution proceeding resolved by a judge who was unbiased. In fact, what Petitioner is upset about is losing a judge she felt was biased in favor of women. At page 122 of her April 29, 1986, deposition (R-5-153), Mrs. Simpson testified that she has been told "Judge Cooper was compassionate towards women because he had lost two wives to cancer and that Judge Gridley was a male chauvinist.." Thus, the only apparent basis for making

an issue of the change in judges is that Petitioner liked Judge Cooper better than Judge Gridley.

Petitioner's testimony on this subject fails to reveal any basis to support any allegation of improper conduct on the part of Respondents regarding the service of Judge Cooper in the original dissolution action. At page 9 of this deposition which was taken on April 30, 1986, Respondent Young was asked:

Q: Do you recall if you filed a Motion to recuse Judge Cooper?

A: Absolutely not. There was no grounds for that.

Q: Was that a sua sponte order?

A: If you mean that he did it on his own motion or for some reason that I don't know about, that is correct. (R5-153).

Petitioner contends that she has

tried to obtain a remedy from the state courts but has been unsuccessful in obtaining the relief requested because of misrepresentations made by Respondents before the courts. Accepting this allegation as true, Petitioner's Complaint becomes one of misuse or abuse of legal process which is not a basis for a claim under 42 U.S.C. Section 1983. See E. G. McDougald v. Jenson, 786 F.2d. 1465, 1488-98 (11th Cir. 1986), cert. denied, 479 U.S. 860 (1986) which cites the general rule in the Eleventh Circuit that a private individual does not act under color of state law by engaging in litigation, even in bad faith, unless that individual is compelled by state law to bring suit or is acting under the authority or pretense of authority of the state.

Count II of Petitioner's Third Amended Complaint seeks relief under 42 U.S.C.

Section 1983 and focuses on a series of events which led to Donald Simpson purchasing the Petitioner's one-half interest in the marital residence. Paragraph 40 of Count II alleges that Respondents "did act in collaboration or jointly and under color of law of the State of Florida to deprive the Petitioner of her rights, privileges and immunities secured to her under the United States Constitution and its laws ..." These allegations are of the broadest nature and are unsupported by the evidence.

The truth of the matter is that it was Petitioner's own actions and omissions which led to her husband, Donald Simpson, being in a position to purchase the marital residence. During her deposition of April 30, 1986, (R5-153), Petitioner was asked:

Q: You will agree with me, that you were fully aware that there

was going to be a sale between 11:00 a.m. and 2:00 p.m. on the 30th of April of that house?

A: Yes.

Again at page 45 of her deposition taken on May 2, 1986, (R5-153), Mrs. Simpson was asked:

Q: Before the Sheriff's sale you knew that the sale was going to take place between the hours of 11:00 a.m. and 2:00 p.m.

A: Uh-umm.

Q: Did you not?

A: Yes.

There is no credible testimony to implicate Respondents in wrongdoing regarding Donald Simpson's purchase of Petitioner's one-half interest in the house. Petitioner's misapprehension of the terms of the Sheriff's sale is not Respondents' fault. It is evident that Petitioner does not understand what a

conspiracy is and has no facts to back up her allegations. Terry Young only found out about the Sheriff's Sale by coincidence when his secretary saw the notice in the paper. (R5-153) Deposition testimony reveals that Mr. Young did not participate in the sale.

In short, Petitioner is not entitled to pursue an action merely because she believes, without factual support, that a conspiracy existed. Therefore the District Court correctly dismissed and granted summary judgment of Petitioner's claims under 42 USC §1983.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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